HOUSE RESEARCH ORGANIZATION • TEXAS HOUSE OF REPRESENTATIVES
P.O. Box 2910, Austin, Texas 78768-2910
(512) 463-0752 • http://www.hro.house.state.tx.us

HOUSE RESEARCH ORGANIZATION

daily floor report

Sunday, May 24, 2015
84th Legislature, Number 78
The House convenes at 1 p.m.
Part One

Twenty-eight bills and two joint resolutions are on the daily calendar for second-reading consideration today. The bills and joint resolutions analyzed or digested in Part One of today's *Daily Floor Report* are listed on the following page.

Alma Allen
Chairman
84(R) - 78

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Sunday, May 24, 2015
84th Legislature, Number 78
Part 1

SUBJECT: Continuing the Health and Human Services Commission

COMMITTEE: Human Services — favorable, without amendment

VOTE: 6 ayes — Raymond, Keough, Naishtat, Peña, Price, Spitzer

1 nay — Rose

2 absent — S. King, Klick

SENATE VOTE: On final passage, April 15 — 31-0

WITNESSES: (*On House companion bill, HB 2304*)
For — Dennis Borel, Coalition of Texans with Disabilities; John Bracken, Montgomery County Youth Services; John Davidson, Texas Public Policy Foundation; Christine Gendron, Texas Network of Youth Services; Marina Hench, Texas Association for Home Care and Hospice; Richard Singleton, STARRY, Inc.; Susan McDowell; (*Registered, but did not testify:* Ricky Broussard, the Arc of Texas; Susan Ross, Texas Dental Association)

Against — Tom Collins, Green Oaks Hospital; Sherry Cusumano, NAMI Dallas; Harrison Hiner, Texas State Employees Union; Janie Metzinger, Mental Health America of Greater Dallas; Constance Smith, NAMI; and five individuals; (*Registered, but did not testify:* Eileen Garcia, Texans Care for Children; Matt Roberts, Mental Health America of Greater Dallas; Abigail Golden)

On — Louis Appel, Texas Medical Association, Texas Pediatric Society, March of Dimes, Texas Academy of Family Physicians, Texas Association of Ob/Gyn, American Congress of Ob/Gyn-Texas Chapter, Federation of Texas Psychiatry; Sandra Bitter, Texas State Independent Living Council; Alison Collazo, Nurse-Family Partnership; Anne Dunkelberg, Center for Public Policy Priorities; Paul Hunt, American Council of the Blind of Texas; Kyle Janek, Health and Human Services Commission; Amy Kantoff, Texas Association of Centers for Independent Living; Sarah Kirkle and Ken Levine, Sunset Advisory Commission;

Madeline McClure, TexProtects; Bee Moorhead, Texas Impact; Gyl Switzer, Mental Health America of Texas; Sheryl Hunt; (*Registered, but did not testify:* Trey Berndt, AARP; Phyllis Hanvey, the Arc of Texas; Bob Kafka, Adapt of Texas, Personal Attendant Coalition of Texas; Maureen Milligan, Teaching Hospitals of Texas; Sasha Rasco and John Specia, DFPS; Gabriel Sepulveda, Nurse-Family Partnership; Amy Tripp, Sunset Advisory Commission; Matt Wolff, NAMI Dallas)

BACKGROUND:

The 78th Legislature enacted HB 2292 by Wohlgemuth in 2003, consolidating 12 health and human services agencies into five agencies under the leadership of the Health and Human Services Commission (HHSC). The mission of HHSC is to maintain and improve the health and human services system in Texas and to administer its programs in accordance with the highest standards of customer service and accountability for the effective use of funds.

Functions. HHSC provides oversight and support for the health and human services agencies, administers the state's Medicaid and other public benefit programs, sets policies, defines covered benefits, and determines client eligibility for major programs.

Governing structure. HHSC is led by an executive commissioner. The agency oversees the health and human services system and provides administrative oversight of the state's health and human services programs.

Funding. For the 2014-15 biennium, HHSC received an appropriation of $48.5 billion, with main expenditures related to Medicaid, the Children's Health Insurance Program, and integrated eligibility and enrollment services.

Staffing. The HHSC system agencies together employed more than 54,000 staff in fiscal 2013, including more than 12,000 staff employed by HHSC and the HHSC Office of Inspector General.

HHSC would be discontinued on September 1, 2015, if not continued in statute.

DIGEST:

SB 200 would continue the Health and Human Services Commission until

September 1, 2027. The Department of Family and Protective Services (DFPS) and the Department of State Health Services (DSHS) would be continued with a Sunset date of September 1, 2023.

The functions of the state's health and human services agencies would be consolidated in two phases to be completed in 2017. The functions of the Department of Assistive and Rehabilitative Services (DARS) and the Department of Aging and Disability Services (DADS) would transfer to HHSC and would be abolished, while DFPS and the DSHS would be maintained as separate agencies to perform certain functions.

The bill also would set guidelines for Medicaid managed care organizations.

Phase one. In phase one, the bill would transfer to HHSC all functions, including any remaining administrative support services, of:

- DARS;
- the Health and Human Services Council;
- the Aging and Disability Services Council;
- the Assistive and Rehabilitative Services Council;
- the Family and Protective Services Council;
- the State Health Services Council;
- the Office for the Prevention of Developmental Disabilities; and
- the Texas Council on Autism and Pervasive Developmental Disorders.

These entities would be abolished after all their functions had transferred in this phase. Starting September 1, 2016, the bill would repeal sections of law related to the abolished councils and provisions related to DARS and the DARS commissioner.

Under phase one, all client services of the health and human services system would transfer to HHSC, including those of the DADS, DFPS, and the DSHS. Prevention and early intervention services also would transition in phase one to DFPS, including the Nurse-Family Partnership Competitive Grant Program, which is currently administered by HHSC.

Phase one transfers would begin once the executive commissioner submitted a transition plan, not later than September 1, 2016.

Phase two. In phase two, all functions of DADS that remained with the agency would transfer to HHSC along with the regulatory functions of DFPS and DSHS and functions related to DSHS' state-operated institutions. DADS would be abolished after all its functions had transferred. Effective September 1, 2017, the bill would repeal provisions related to DADS and the DADS commissioner.

Phase two transfers would take place between September 1, 2016, and September 1, 2017.

Consolidation of administrative support services. The bill would require the executive commissioner of HHSC, after consultation with affected state agencies and divisions, to transfer and consolidate support services functions within HHSC to the extent such consolidation was feasible and contributed to the system's effective performance. The consultation would ensure that client services were minimally affected.

The bill would require HHSC and the affected state agencies and divisions to have an agreement or memorandum of understanding to identify measurable performance goals and how an agency or division could seek permission from the HHSC executive commissioner to find an alternative way to address needs. The agreement also would have to identify steps to ensure that programs of any size would receive adequate administrative support and would specify, if appropriate, that staff providing administrative support would be located with individuals who would require those services to ensure that staff would understand the program and would respond timely to the individuals' needs.

DARS. A power, duty, program, function, or activity at DARS would not be transferred to HHSC if another bill of the 84th Legislature became law and provided for the transfer of those responsibilities to the Texas Workforce Commission (TWC), subject to any necessary federal approval or authorization. If DARS and TWC did not receive necessary federal approval or authorization by September 1, 2016, the responsibilities of

DARS would transfer to HHSC as provided in the bill.

DFPS. The bill would maintain DFPS as a separate agency and would specify the functions retained at DFPS, including the statewide intake of reports and other information related to:

- child protective services and federally required services;
- adult protective services other than investigations of alleged abuse, neglect, or exploitation of an elderly person or person with a disability under certain circumstances; and
- prevention and early intervention services.

The Nurse-Family Partnership Program would transfer from HHSC to DFPS. Prevention and early intervention services would be organizationally separate from DFPS divisions providing child protective services and adult protective services. DFPS could not use the agency's name, logo, or insignia on materials related to the agency's prevention and early intervention services provided by contractors or materials distributed to the agency's clients.

DSHS. The bill would maintain DSHS as a separate state agency with control over its public health functions, including health care data collection and maintenance of the Texas Health Care Information Collection program.

Transition plan. The bill would require the transfers to HHSC to be accomplished according to a transition plan developed by the HHSC executive commissioner that would be submitted to the transition legislative oversight committee, governor, and Legislative Budget Board by March 1, 2016. The executive commissioner would have to review and consider the comments and recommendations of the committee before finalizing the plan. The transition plan would outline HHSC's reorganized structure and divisions and would include a timeline specifying the date for making the required transfers, the date each state agency or entity would be abolished, and the date each division of HHSC would be created and the division director appointed. The transition plan would be published in the Texas Register.

The plan would contain an evaluation and determination of the feasibility and potential effectiveness of consolidating administrative support services into HHSC. This would include a timeline for their consolidation that would describe which support services would be transferred by the last day of each transfer period and measures HHSC would take to ensure information resources and contracting support services would continue to operate properly.

Divisions within HHSC. The bill would require the HHSC executive commissioner to establish divisions within HHSC along functional lines. The divisions would include the Office of Inspector General, a medical and social services division, a regulatory division, an administrative division, and a facilities division for administering state facilities including state hospitals and state supported living centers. The executive commissioner could establish additional divisions as appropriate.

The HHSC executive commissioner would appoint a director for each division established within HHSC, except the director of the Office of the Inspector General, who would continue to be appointed by the governor. The executive commissioner would define duties and responsibilities of a division director and would develop clear policies for delegating decision-making and budget authority to the directors.

NorthSTAR and behavioral health. The bill would remove references in statute to the NorthSTAR behavioral health program. The bill would require HHSC to ensure that Medicaid managed care organizations would fully integrate recipients' behavioral health services into their primary care coordination. HHSC would give particular attention to managed care organizations that contracted with a third party to provide behavioral health services in monitoring the compliance of the managed care organizations with integration requirements.

Internal audit. The bill would require HHSC to operate a consolidated internal audit program for HHSC and each health and human services agency.

Websites. HHSC would establish a process to ensure system websites were developed and maintained according to standard criteria for

uniformity, efficiency, and technical capabilities. HHSC would ensure the websites met standard criteria and would consolidate websites, if appropriate.

Transition Legislative Oversight Committee. The bill would establish the Health and Human Services Transition Legislative Oversight Committee to facilitate the transfer of agency functions to HHSC and the transfer and consolidation of administrative support services functions with minimal negative effect on the delivery of services. With assistance from HHSC and the transferred agencies and entities, the committee would advise the executive commissioner of HHSC on specified functions to be transferred, related funds and obligations, and the reorganization of HHSC's administrative structure under the law.

The committee's members would include legislators appointed by the lieutenant governor and the speaker of the House in addition to public members appointed by the governor. Appointments would be made by October 1, 2015. The HHSC executive commissioner would serve as an ex-officio, non-voting member. The committee would meet at least quarterly and would be subject to statute regarding open meetings.

The committee would submit a biennial report to provide an update on the progress of and issues related to the transfer of functions to HHSC and DFPS, including the need for any additional changes to statute that were needed to complete the transfer of prevention and early intervention services to DFPS and the reorganization of the commission's administrative structure. The committee would be abolished September 1, 2023.

The HHSC executive commissioner would conduct a study and submit a separate report and recommendation to the Transition Legislative Oversight Committee regarding the need to continue DFPS and DSHS as agencies.

Policy and performance office. The bill would require the executive commissioner to establish an executive-level office to coordinate policy and performance efforts across the health and human services system by October 1, 2015. The office would develop a performance management

system, would lead in supporting and overseeing the implementation of major policy changes and managing organizational changes, and would be a centralized body of experts with expertise in program evaluation and process improvement. The office also would assist the Transition Legislative Oversight Committee with the implementation of changes to policy and organization major policy changes and organizational changes related to the consolidation of the health and human services system.

HHSC Executive Council. The bill would establish the HHSC Executive Council to receive public input and advise the executive commissioner on the operation of HHSC. The council would not have the authority to make administrative or policy decisions and would not be subject to statute related to open meetings. The council would seek and receive public comment on proposed rules, recommendations of advisory committees, legislative appropriations requests, program operation, and other items the executive commissioner determined appropriate.

The bill would direct the executive commissioner to make every effort to ensure the appointment of other individuals to result in a balanced representation of a broad range of related industry and consumer interests and broad geographic representation on the council.

Medicaid eligibility. HHSC would develop and implement a statewide effort to assist Medicaid recipients who use Medicaid managed care with maintaining their eligibility for Medicaid and avoiding lapses in coverage. If cost effective, HHSC would develop specific strategies for Medicaid recipients who received Supplemental Security Income (SSI) benefits with maintaining eligibility. HHSC would ensure information relevant to a recipient's eligibility would be provided to the recipient's managed care organization.

Medicaid data. HHSC would regularly evaluate whether data submitted by Medicaid managed care organizations continued to serve a useful purpose and whether additional data was needed to oversee the contracts or evaluate the effectiveness of Medicaid. The agency would collect Medicaid data that captured the quality of services received by Medicaid recipients and would develop a dashboard by March 1, 2016, to assist agency leadership with overseeing Medicaid. The dashboard would

compare the performance of Medicaid managed care organizations by identifying important Medicaid indicators.

Medicaid provider enrollment. The bill would require HHSC to create a single, consolidated Medicaid provider enrollment and credentialing process and to create a centralized Internet portal through which providers could enroll in the program. The bill would require Medicaid managed care organizations to formally re-credential Medicaid providers along the timeline for the single, consolidated Medicaid provider enrollment and credentialing process.

Medicaid providers and the OIG. The bill would require the Office of Inspector General (OIG) and each licensing authority that required fingerprints for a health professional's criminal background check to enter into a memorandum of understanding. The memorandum of understanding would include a process for the OIG to confirm with a licensing authority that a health care professional was licensed and in good standing for purposes of determining eligibility to participate in Medicaid. The licensing authority would immediately notify OIG if a provider's license had been suspended or revoked or if the authority had taken disciplinary action against the professional.

OIG could not conduct a criminal background check for the purpose of determining a health care provider's eligibility to participate as a Medicaid provider if the provider was already licensed and in good standing.

The OIG also would establish guidelines that the executive commissioner would adopt by rule for the evaluation of a potential Medicaid provider's criminal history information. The guidelines would outline conduct that would result in exclusion of a provider from Medicaid. The OIG's guidelines could not be stricter than those of a licensing authority that conducts fingerprint-based criminal background checks.

Provider enrollment contractors and Medicaid managed care organizations would defer to the OIG when deciding whether a person's criminal history precluded the person from participating as a Medicaid provider. The OIG would routinely check federal databases to ensure a person excluded from

participating in Medicaid or Medicare was not a participating Medicaid provider.

The OIG would inform HHSC or the health care professional within 10 days after receiving the person's application of whether the provider should be denied participation in Medicaid. The OIG would determine metrics for measuring the length of time for conducting a determination of a person's Medicaid eligibility.

Section 1115 waiver and DSRIP projects. The bill would specify that when HHSC seeks to renew the Section 1115 Texas Health Care Transformation and Quality Improvement waiver, HHSC would seek to reduce the number of approved project options that could be funded under the waiver using delivery system reform incentive payments (DSRIPs) to include only those projects that would be most critical to improving the quality of health care and were consistent with an operational plan developed by HHSC. HHSC would take into consideration the diversity of local and regional health care needs when reducing the number of approved project options. These provisions would expire September 1, 2017.

Incentive-based payment pilot program. HHSC would develop a pilot project to increase the use and effectiveness of incentive-based provider payments by Medicaid managed care organizations. HHSC and the managed care organizations would work with health care providers and professional associations in at least one managed care service delivery area to develop common payment incentive methodologies for the pilot program. By September 1, 2018, HHSC would identify goals and outcome measures for statewide implementation of the pilot program. Provisions related to the pilot program would expire on that date.

Hotlines and call centers. HHSC would establish a process to ensure all system hotlines and call centers were necessary and appropriate. HHSC would maintain an inventory of all hotlines and call centers and would use the inventory and assessment criteria to periodically consolidate hotlines and call centers along functional lines. The initial assessment and consolidation of hotlines would happen by March 1, 2016. HHSC also would seek to maximize the use and effectiveness of the agency's 211

telephone number.

Ombudsman. The executive commissioner would establish the office of the ombudsman for the health and human services system. The bill would abolish other ombudsman offices for state agencies that were abolished when they transferred their functions into HHSC. The bill would retain the office of independent ombudsman for state supported living centers, office of the state long-term care ombudsman, and any other ombudsman office required by federal law.

The office would not have authority to provide a separate process for resolving complaints or appeals. The executive commissioner would have to develop a standard, centralized process for tracking and reporting received inquiries and complaints from field, regional, or other offices across the system.

Removed advisory committees. The bill would remove certain advisory committees from statute and would make conforming changes. The HHSC executive commissioner would establish and maintain advisory committees across all major areas of the health and human services system according to issue areas specified in the bill.

HHSC would create a master advisory committee calendar for all advisory committee meetings. The commission would post the master calendar on its website and stream advisory committee meetings on its website.

Drug Utilization Review Board. The bill would abolish the Pharmaceutical and Therapeutics Committee and would transfer its functions to the Drug Utilization Board. The board would review all drug classes included in the preferred drug lists at least every 12 months and could recommend drugs to be included or excluded from the lists. HHSC would publicly disclose each specific drug recommended for or against preferred drug list status for each drug class and would post the disclosure on its website within 10 business days of board deliberations.

Limited Sunset review. HHSC would be subject to a limited-scope Sunset review during the 2022-23 fiscal biennium. The bill would specify the areas on which the review would focus. Provisions related to the

limited-scope review would expire in 2023.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

SB 200 would address problems of accountability, inefficiency, and policy inconsistency among the state's health and human services agencies by consolidating the agencies under HHSC. Consolidating the state's health and human services agencies would strengthen accountability at HHSC by streamlining programs, breaking down institutional and structural barriers, and eliminating fragmentation of services by combining similar functions. The 2003 consolidation of human services agencies was left incomplete and did not fully allow the state's health and human services agencies to work together. The bill would promote government efficiency and reform within the HHSC system.

Both the Sunset Advisory Commission report and the governor's HHSC Strike Force report reached the conclusion that the state's health and human services system is not working and needs to be realigned. The bill would incorporate many of the Strike Force's recommendations, including taking a more graduated approach to reorganization. The bill would help ensure significant legislative oversight through every step of the transition to see that the restructuring is actually working. The Sunset report and the Strike Force report both recommended abolishing DADS and DARS and consolidating client services and administrative functions. The aim of the bill is less to create a "mega-agency" and more to improve services for clients.

The bill also would address stakeholder concerns by retaining the Department of State Health Services and the Department of Family and Protective Services as separate agencies within the HHSC system. Keeping these agencies separate but still under the consolidated system would ensure that these agencies could continue to effectively fulfill their missions of improving Texans' public health and protecting children and seniors.

The timeline in the bill is long enough to allow for a thoughtful transition and would provide enough time for the transition to take place if HHSC

decided to apply for a renewed sec. 1115 Medicaid waiver. A longer timeline might create more problems with implementation and could lead to an incomplete or failed consolidation.

Discontinuing NorthSTAR and moving to a new model would result in significant savings to the state. NorthSTAR represents an outdated model for delivery of behavioral health services and prevents the Dallas area from taking advantage of new federal funding opportunities. The bill would transition behavioral health services for Medicaid clients into managed care across the state. The bill would help ensure continuity of care for clients as they moved from NorthSTAR to behavioral health as part of managed care.

The transition plan process would require the Transition Legislative Oversight Committee to consider input from appropriate stakeholders and to hold public hearings throughout the state to help ensure that input from all affected parties would be considered.

The bill would make advisory committee meetings public and would require meetings to be streamed online, which would increase access to this important venue for detailed policy discussions and meaningful stakeholder input.

The bill would clarify the role and authority of the HHSC ombudsman's office to resolve complaints throughout the system and to collect standard complaint information. Consolidating the ombudsmen offices at HHSC except for those that are federally required would provide a centralized office for individuals to address their concerns.

By consolidating hotlines and requiring HHSC to develop criteria for assessing the need for all existing hotlines and call centers, the bill would help ensure that the agency's call centers could fully resolve client complaints and that constituents had a quick point of contact with the agency.

The bill also would reduce gaps in Medicaid recipients' eligibility status by requiring the state to assist with maintenance of Medicaid eligibility statewide and to help ensure continuity of Medicaid eligibility for

individuals with Social Security income.

OPPONENTS SAY:

SB 200's reorganization and consolidation of the state's health and human services agencies may not be a cure-all for poor coordination or performance. The governor's HHSC Strike Force report found that many of HHSC's current problems resulted from the execution of the 2003 attempt at consolidation. Focusing on improving communication and the institutional culture of health and human services agencies could be more effective than consolidation. The creation of a mega-agency through the bill could make it harder for HHSC to attract and retain well-qualified directors of the newly created divisions within HHSC. In addition, recent contracting issues highlighted problems at HHSC that would not be conducive to consolidation.

The timeline for the bill is still relatively short and may not leave enough time for HHSC to manage oversight of Medicaid managed care for nursing home residents and dual eligibles as well as the renewal of the sec. 1115 Medicaid waiver.

The bill would eliminate a successful behavioral health pilot program by dismantling NorthSTAR. This change could increase waitlists for needed mental health care and would reduce access to mental health providers. Clients in the NorthSTAR program report shorter wait times for appointments with mental health providers, which represents a cost savings to the state in the form of avoided emergency room visits for untreated mental health issues.

There is a lack of clarity in the bill about how the consolidated health and human services enterprise would engage robust and geographically diverse citizen and stakeholder input. The creation of a single council for HHSC, DADS, and DARS issues also may dilute the specific expertise necessary to guide the combined functions of these three agencies.

The required public hearings before the HHSC executive commissioner would finalize a transition plan that is not as robust as it could be. The public should have access to a draft transition plan and the public's comments and concerns should be published and submitted for the consideration of the Transition Legislative Oversight Committee.

Provisions specifying that the ombudsman's office at HHSC would have no authority to provide a separate process for resolving complaints or appeals should be clarified.

SUBJECT: Transferring certain occupational regulatory programs from DSHS

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Raymond, Rose, Keough, S. King, Naishtat, Peña, Price, Spitzer

0 nays

1 absent — Klick

SENATE VOTE: On final passage, May 14 — 31-0

WITNESSES: (*On House companion bill, HB 2510*)
For — Chase Bearden, Coalition of Texans with Disabilities; Debra King, Texas Academy of Nutrition and Dietetics; Susan Ross, Texas Dental Association; John Holcomb, Texas Medical Association; Kate Murphy, Texas Public Policy Foundation; Russell Graham, Texas Society for Respiratory Care; Brian Rich, Texas Society of Radiologic Technologists; (*Registered, but did not testify*: Grace Davis, Hays Caldwell Council on Alcohol and Drug Abuse; Andrew Brummett, Institute For Justice; Will Francis, National Association of Social Workers - Texas Chapter; Richard Briley, Texas Association of Municipal Health Officials; Nora Belcher, Texas e-Health Alliance; Scott Pospisil, Texas Hearing Aid Association, Inc.; Kenneth Besserman, Texas Restaurant Association; Daniel Schorre and Gaylene Lee, Texas Society for Respiratory Care; Tiffani Walker, Texas Society of Radiological Technologists; David Anderson, Texas State Athletic Trainers Association; and 11 individuals)

Against — Courtney Hoffman, Academic Language Therapy Association; Lee Spiller, Citizens Commission on Human Rights; Cindy Corley, Texas Environmental Health Association; Manuel Campos; Robin Cowsar; Rebecca Gould; (*Registered, but did not testify*: Larry Higdon, Texas Speech-Language-Hearing Association)

On — Cynthia Humphrey, Association of Substance Abuse Programs; Kathryn Lewis, Disability Rights Texas; Catherine Mize, Hanger Clinic; Gyl Switzer, Mental Health America of Texas; Katharine Teleki, Sunset

Advisory Commission; Scott Jameson and Robb Walker, Texas Chapter of the American Academy of Orthotists and Prosthetists; Donald Lee, Texas Conference of Urban Counties; Lee Johnson, Texas Council of Community Centers; George Ferrie, Texas Department of Licensing and Regulation; Mari Robinson, Texas Medical Board; Katie Brinkley; Mark Kirchner; Ray Smith; (*Registered, but did not testify*: Kirk Cole, Department of State Health Services; Kyle Janek, Health and Human Services Commission; Ken Levine and Erick Fajardo, Sunset Advisory Commission; Michael Kelley, Texas Department of Licensing and Regulation; Eric Woomer, Texas Dermatological Society)

BACKGROUND: The Department of State Health Services was formed in 2003 when the 78th Legislature consolidated the Texas Department of Health, Texas Commission on Alcohol and Drug Abuse, Texas Health Care Information Council, and the mental health functions of the Texas Department of Health and Mental Retardation. The agency's mission is to improve health and well-being in Texas. Unless continued by legislation enacted by the 84th Legislature, the agency would be abolished on September 1, 2015.

Governing structure. The executive commissioner of the Health and Human Services Commission (HHSC) appoints the commissioner of DSHS. A nine-member State Health Services Council appointed by the governor helps to develop rules and policies for the agency. More than 40 advisory committees and councils also provide the agency with advice and expertise on agency rules, policies, and programs. There are 11 additional governor-appointed boards that are administratively attached to DSHS and that license and regulate certain health professions. DSHS administers more than 70 regulatory programs and licensed more than 360,000 individuals, facilities, and other entities in fiscal 2014.

Funding. The 83rd Legislature appropriated $6.5 billion to DSHS in the fiscal 2014-15 budget, including $2.6 billion in general revenue funds, $956.2 million in dedicated general revenue funds, $2.5 billion in federal funds, and $539.2 million in other funds over the biennium. The 83rd Legislature appropriated about $456 million in additional general revenue funds to DSHS for the 2014-15 biennium, largely to support programs for mental health and substance abuse and women's health.

Staffing. In fiscal 2013, DSHS employed about 12,000 staff, most of whom work at the agency's state facilities, including nine state mental health hospitals. More than 2,600 employees work at the DSHS state headquarters in Austin.

DIGEST:

SB 202 would transfer certain occupational licensing programs from DSHS to the Texas Department of Licensing and Regulation (TDLR) and others to the Texas Medical Board.

Texas Department of Licensing and Regulation. *Transfers during the biennium ending August 31, 2017.* The bill would transfer regulation of midwives; speech-language pathologists and audiologists; hearing instrument fitters and dispensers; athletic trainers; orthotists and prosthetists; dyslexia therapists and practitioners; and dieticians from DSHS to TDLR during the biennium ending August 31, 2017.

The bill would remove the separate Sunset dates for the regulatory programs. The bill would reconstitute the existing boards and committees associated with these professions as advisory boards at TDLR and would make them responsible for providing advice and recommendations to TDLR on technical matters relevant to the administration of the laws associated with the regulatory programs. The bill would specify the advisory boards' appointments, meeting requirements, and duties. The Orthotists and Prosthetists Advisory Board would consist of seven members, of whom there would be two licensed orthotist members who each had practiced orthotics for the past five years and two licensed prosthetist members who had each practiced prosthetics for the past five years.

The bill also would make conforming changes to existing TDLR requirements and procedures and would transfer administration and enforcement of the regulatory programs to TDLR's executive director and rulemaking authority to the Texas Commission of Licensing and Regulation. The bill would repeal provisions of law associated with the regulatory programs that would duplicate or conflict with other provisions of law that apply to TDLR.

The Commission of Licensing and Regulation could not adopt a new rule

relating to the scope of practice or a health-related standard of care for regulation of a profession that would be transferred in the 2017 biennium unless the rule had been proposed by the advisory board established for that profession. The commission would retain authority for final adoption of all rules and would be responsible for ensuring compliance with all laws regarding the rulemaking process.

The Commission of Licensing and Regulation would adopt rules clearly specifying the manner in which TDLR and the commission would solicit input from and provide information to a profession's advisory board regarding the general investigative, enforcement, or disciplinary procedures of the department or commission.

Transfers during the biennium ending August 31, 2019. Effective September 1, 2017, the bill would transfer regulation of offender education providers, laser hair removal, massage therapists, code enforcement officers, sanitarians, and mold assessors and remediators from DSHS to TDLR during the biennium ending August 31, 2019. The TDLR executive director would administer and enforce the regulatory programs, and TDLR would take over rulemaking authority associated with the programs. The bill would authorize TDLR to establish an advisory committee to provide advice and recommendations to TDLR on technical matters relevant to administration of code enforcement officer and sanitation programs.

The bill would make conforming changes related to administration and enforcement for each of the regulatory programs to conform with existing TDLR requirements and procedures. The bill also would repeal provisions of law associated with the regulatory programs that would duplicate or conflict with other provisions of law that apply to TDLR.

Transition provisions. The bill would require DSHS and TDLR to adopt a transition plan as soon as practicable after the effective date of the transfer to provide for the orderly transfer of power, duties, functions, programs, and activities. The transition plan would have to be completed by the respective effective dates of each program's transition. The bill would require TDLR to create a health professions division by August 31, 2017, to oversee programs transferred from DSHS and to ensure that TDLR

develops necessary health-related expertise.

Transition of staff. The bill would specify that on the date the transition plan would require the transfer of a particular program to TDLR, all full-time equivalent employee positions at DSHS that concerned the administration or enforcement of the program being transferred would become positions at TDLR. TDLR would post the positions for hiring and would give consideration to an applicant who was an employee at DSHS immediately before the date of the transfer and was primarily involved in administering or enforcing the transferred program. TDLR would not be required to hire a former DSHS employee.

Texas Medical Board. *Medical radiologic technologists and respiratory care practitioners.* The bill would transfer the regulation of medical radiologic technologists, respiratory care practitioners, medical physicists, and perfusionists from DSHS to the Texas Medical Board (TMB) and would establish associated advisory boards and advisory committees. The bill would require these programs to undergo Sunset review at the same time as TMB. The bill would require fingerprint-based background checks for new applications and renewals for all four professions transferring to TMB and would require the advisory boards and TMB to adopt rules and guidelines for consequences of criminal convictions. The background checks would apply to applications or renewals starting January 1, 2016. The bill would repeal provisions of law associated with the regulatory programs that duplicate or conflict with other provisions of law that currently apply to TMB and would make conforming changes.

Rules related to nurses and physician assistants. The bill would require certain agencies to adopt rules to regulate the manner in which a person who held a license issued by the agency could order, instruct, or direct another authorized person in the performance of a radiologic procedure.

The Texas Board of Nursing and the Texas Physician Assistant Board would adopt rules governing registered nurses or physician assistants, as applicable, who performed radiologic procedures without being required to hold a certificate in medical radiologic technology, including rules establishing mandatory training guidelines and requiring registered nurses performing radiologic procedures to register with the Texas Board of

Nursing or Texas Physician Assistant Board, as applicable, and to identify the practitioner ordering the procedures.

Medical physicists and perfusionists. The bill would transfer the regulation of medical physicists and perfusionists from DSHS to TMB, abolish their associated boards, and would create informal advisory committees for the professions. The bill would set requirements for appointments, terms, and meetings of the advisory committees and their members. The advisory committees would have no independent rulemaking authority, and the bill would require TMB to adopt rules and implement policies necessary to regulate the medical physicist and perfusionist regulatory programs.

Transition provisions. The bill would require DSHS and TMB to adopt a transition plan to provide for the orderly transfer of powers, duties, functions, programs, and activities for programs transferred by DSHS to TMB as soon as practicable after September 1, 2015. The bill would specify that rules and fees; licenses, permits, or certificates; and complaints, investigations, contested cases, or other proceedings continue or transfer from DSHS to TMB until the authorized entities change them.

The bill would abolish the existing Texas Board of Licensure for Professional Medical Physicists and the Texas State Perfusionist Advisory Committee on September 1, 2015, and would require the governor and the president of TMB, as appropriate, to appoint members to the Texas Board of Medical Radiologic Technology, the Medical Physicist Licensure Advisory Committee, the Perfusionist Licensure Advisory Committee, and the Texas Board of Respiratory Care as soon as practicable after September 1, 2015.

The bill would add medical radiologic technologists, medical physicists, perfusionists, and respiratory care practitioners to the list of professions scheduled to be subject to Sunset review and expiration on September 1, 2017, unless continued in statute. TMB, the Texas Board of Medical Radiologic Technology, or the Texas Board of Respiratory Care, as appropriate, could make a referral to the Texas Physician Health Program and require participation in the program as a prerequisite for issuing or maintaining a license, certificate, permit, or other authorization as a

medical radiologic technologist, medical physicist, perfusionist, or respiratory care practitioner.

Transition of staff. The bill would specify that on September 1, 2015, all full-time equivalent employee positions at DSHS that concerned the administration or enforcement of programs transferred to TMB would become positions at TMB. TMB would post the positions for hiring and would give consideration to an applicant who was an employee at DSHS immediately before September 1, 2015, and was primarily involved in administering or enforcing the transferred program. TMB would not be required to hire a former DSHS employee.

Report. The bill would require TDLR to submit a report regarding the implementation of the provisions of the bill related to transfer of programs from DSHS to TDLR to:

- the Sunset Advisory Commission;
- each standing committee of the Senate and House of Representatives with primary jurisdiction over health and human services or the occupational licensing of health-related professions; and
- each advisory board or committee established to advise TDLR regarding a program transferred to the department.

The report would be posted on the TDLR's website and would include detailed information regarding:

- the status of the implementation of the transition plan, including an explanation of any delays or challenges in implementing the plan;
- appointments to each advisory board or committee advising TDLR;
- the establishment and operation of the health professions division of TDLR;
- any other information TDLR would consider relevant to the transfer of programs to the department.

Reporting requirements would expire January 1, 2020.

Deregulation of activities and occupations. The bill would discontinue various regulatory programs.

Repealed sections related to state licensing, regulation, and permitting. The bill would repeal provisions and make conforming changes to discontinue state involvement in the licensing, registration, and permitting of:

- indoor air quality in state buildings;
- rendering;
- tanning bed facilities;
- bottled and vended water certifications;
- personal emergency response systems;
- opticians;
- contact lens dispensers; and
- bedding.

Tanning bed facilities. The bill would require a sign posted at a tanning facility to include a statement stating, "a tanning facility operator who violates a law relating to the operation of a tanning facility is subject to a civil or criminal penalty. If you suspect a violation, please contact your local law enforcement authority or local health authority." The sign would no longer include a statement that a customer could call the DSHS toll-free telephone number to report an alleged injury regarding a tanning device.

Expiration of licenses, permits, certification of registration, or authorization. The bill would specify that a license, permit, certification of registration, or other authorization repealed by the bill would not affect the validity of a disciplinary action taken, offense committed, or a fee paid before September 1, 2015, and that was pending before a court or other governmental entity on that date. The bill would specify that an offense or violation of law repealed by the bill was governed by the law in effect when the violation was committed and would continue the former law for that purpose. The repeal of law in the bill would not entitle a person to a refund of an application, licensing, or other fee paid before September 1,

2015.

The bill also would include conforming changes to SB 219 enacted by the 84th Legislature.

The bill would take effect September 1, 2015, except for the transfer of regulatory programs from DSHS to TDLR in the biennium ending August 31, 2019, which would take effect September 1, 2017.

SUPPORTERS SAY:

SB 202 would eliminate unnecessary regulation and would reduce DSHS' role in occupational licensing so the agency could focus on its core function: improving the health and well-being of Texans. The bill is narrowly focused on occupational licensing and is not a DSHS Sunset bill. For this reason, the bill does not include provisions related to continuation of the agency or other Sunset recommendations. Sunset provisions related to DSHS as well as other Sunset recommendations for the agency will be addressed in other legislation and are outside the scope of this bill.

Discontinuing regulatory programs housed at DSHS and moving certain programs to the Texas Department of Licensing and Regulation or to the Texas Medical Board would improve the agency's focus on protecting public health while maintaining necessary licensing and regulation for certain professions. The bill represents a compromise among stakeholders on several issues related to the Orthotists and Prosthetists Advisory Board, dyslexia therapists and practitioners, radiology, rulemaking input for boards transferring to TDLR, hiring of former DSHS regulatory staff, tanning bed warning signs, and certification of food handler education.

The bill would require TDLR to provide the Legislature, the Sunset Advisory Commission, and related advisory boards with public status reports to allow for monitoring the transfer of regulatory programs from DSHS to TDLR.

OPPONENTS SAY:

SB 202 does not contain a Sunset provision for DSHS and leaves uncertainty regarding whether the agency would be continued after its expiration date in current statute of September 1, 2015.

OTHER

SB 202 should include recommendations from the Sunset Advisory

OPPONENTS SAY:

Commission to require DSHS to develop a comprehensive inventory of the public health responsibilities of the state and local departments and for HHSC to conduct a strategic review of behavioral health services. These recommendations were included in previous versions of this bill and would provide needed coordination of health services across the state.

NOTES:

The bill would have a negative net fiscal impact of $8.3 million through the biennium ending August 31, 2017, according to the Legislative Budget Board’s fiscal note.

SUBJECT: Increasing the homestead exemption

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner

0 nays

1 absent — Wray

SENATE VOTE: On final passage, March 25 — 26-5 (Ellis, Eltife, Rodriguez, Whitmire, Zaffirini)

WITNESSES: For — Michael Openshaw, North Texas Tea Party (*Registered, but did not testify*: Dustin Matocha, Empower Texans; Julie McCarty, NE Tarrant Tea Party; Dean Wright, New Revolution Now; Mark Ramsey, Republican Party of Texas; Daniel Gonzalez and Steven Garza, Texas Association of Realtors; Ned Munoz, Texas Association of Builders; Talmadge Heflin, Texas Public Policy Foundation; and nine individuals)

Against — Chris Frandsen, League of Women Voters of Texas (*Registered, but did not testify*: James LeBas, AECT, TXOGA; Adrian Acevedo, Anadarko Petroleum Corp.; Tom Sellers, ConocoPhillips; Kinnan Golemon, Devon Energy, Shell Oil Company; Martin Allday, Enbridge Energy; Amy Maxwell, Marathon Oil Corporation; Richard A. (Tony) Bennett, Texas Association of Manufacturers; Bill Hammond, Texas Association of Business; Hector Rivero, Texas Chemical Council; Mari Ruckel, Texas Oil and Gas Association; Thure Cannon, Texas Pipeline Association; Richie Jackson, Texas Restaurant Association; Ronnie Volkening, Texas Retailers Association; Dale Craymer, Texas Taxpayers and Research Association; John W. Fainter Jr., The Association of Electric Companies of Texas, Inc.)

On — Dick Lavine, Center for Public Policy Priorities; Ro'Vin Garrett, Tax Assessor Collectors Association of Texas; Karey Barton, Texas Comptroller of Public Accounts; Wayne Pulver, Texas Legislative Budget

Board; Christy Rome, Texas School Coalition

BACKGROUND: Texas Constitution, Art. 8, sec. 1-b(c) requires a school district to exempt $15,000 of the value of a residence homestead from taxation. A school district must grant an additional $10,000 exemption from the appraised value of a residence homestead for adults who are disabled or more than 65 years old.

Texas Constitution, Art. 8, sec. 1-b(d) prohibits certain increases in the total amount of property tax levied for general elementary and secondary public school purposes on a homestead of a person or the spouse of a person who is 65 or older or disabled.

Tax Code, sec. 11.13 allows the governing body of a taxing unit to grant an additional exemption of up to 20 percent of the appraised value of a residence homestead, as long as that exemption is at least $5,000.

DIGEST: CSSB 1 would increase the mandatory homestead exemption from $15,000 to $25,000. The taxable value of homesteads owned by the elderly or people who are disabled also would be correspondingly reduced. A school district would be entitled to certain additional state aid via the Foundation School Fund to make up for the lost maintenance and operations tax revenue and tax revenue used to service eligible debt.

This bill would require school district tax assessors to prepare taxes as though the bill and CSSJR 1 took effect. This bill would then require the assessor of a school district to calculate and publish on a provisional tax bill a statement of the amount saved from the pending increase to the homestead exemption. That provisional tax bill would assume the higher homestead exemption. If CSSJR 1 was not approved by the voters, the bill would require the assessor for each school district to prepare and mail a supplemental tax bill accounting for the difference.

The bill would provide that the taxes for which a supplemental tax bill is mailed under the provisions in the bill were due on receipt of the tax bill and were delinquent if not paid before March 1 of the year following the year in which they were imposed.

The bill would require a school district to waive penalties and interest on a delinquent tax for which a supplemental tax bill is mailed under the provisions of the bill.

The bill has various transitional provisions for the 2015-2016 tax year. Specifically, the bill would require a school district's wealth per student, local share of program cost, enrichment tax rate, local revenue, bond tax rate, existing debt rate, and taxable value of property for the 2015-2016 school year to be calculated assuming a $25,000 homestead exemption.

Certain school districts would be able to delay an election on possible actions to achieve the equalized wealth level for the 2015-2016 tax year. Such a district also would be able to adopt a tax rate before its equalized wealth level was certified by the commissioner of education. A district which fails to hold the election or does not receive voter approval at the election would be subject to detachment and annexation of property as necessary to achieve the equalized wealth level as soon as is practicable after CSSJR 1 was approved.

This bill would apply beginning with the 2015 tax year but would have no effect if CSSJR 1 was not approved at a statewide election.

SUPPORTERS SAY:

CSSB 1 would cut property taxes by increasing the homestead exemption, which is the best possible use of state funds. It would stimulate real economic growth and provide tax relief that voters have asked for and to those who need it most.

Aggregate impacts. This tax cut would result in a broad reduction in the effective tax burden borne by Texans. In so doing, it could stimulate consumption, which drives job growth. Job growth, in turn, stimulates more consumption. The consumer, not the government, is the most economically efficient agent. Increasing the homestead exemption would put more money in consumers' pockets, allowing more money to be used more efficiently in the economy.

Because the property tax is imposed on living spaces, virtually everyone in the state pays the property tax in some manner. Homeowners pay directly, and renters pay it through higher prices as landlords pass on the

cost. Although the homestead exemption would not directly benefit renters, it would drive down the cost of owning a home, which could reduce demand for rental property and reduce rents overall. This means that all tax relief delivered by this bill would go directly to a broad range of individuals. Cutting property taxes would put money in the hands of people, whereas the entirety of a franchise tax cut and more than 40 percent of a sales tax cut would go to businesses.

Tax cut alternatives. The Legislature should cut the property tax because it is by far the most onerous and noticeable tax. It is a tax upon the ownership of property, one of the most fundamental rights that people have. Voters frequently ask for property tax cuts, but rarely are overly burdened by the sales tax and only see the secondary effects of the franchise tax. The Legislature should do what the voters elected lawmakers to do.

If the Legislature were to enact a homestead exemption linked to the median value of a home in the state, the tax base would gradually shift onto businesses. Businesses already pay property taxes, sales taxes, and franchise taxes. The Legislature should avoid tax reforms that shift the tax burden from one side of the economy to the other.

Microeconomic impacts. The property tax is not related to income or consumption, so it can have an intensely negative impact on those with fixed incomes. If appraisal values rise significantly and tax rates are not adjusted downward, people on a fixed income could find themselves priced out of their own homes. This phenomenon is particularly common in areas with strong economic growth, where demand for housing is strong.

Data from the comptroller's *Tax Exemptions and Tax Incidence* report indicate that homestead exemptions particularly benefit low-income individuals. This is because a homestead exemption exempts a higher percentage of the total value of a less expensive house.

Local control. These tax cuts would have a significant benefit to taxpayers that would not be taken away by local governments. Increases in property taxes can happen in two ways: rate increases and appraisal

increases. Rate increases are unlikely to happen, since most school districts are required to gain voter approval for increases in property tax rates. Increases in appraisals are a good thing, since they demonstrate that demand for housing in Texas is growing and home values are rising. Although the tax imposed on a property could go up due to rising appraisal values even with this bill, the bill would significantly reduce the size of the increase, delivering needed tax relief to Texans who might otherwise be slowly priced out of their homes.

Education. Increasing the homestead exemption would increase the state share of education funding. The Legislature should strive to fulfill its obligations and fully and completely fund public education instead of relying on local funding, which has caused the problem of skyrocketing property taxes. Pending litigation may result in the state being required to increase its contribution. This bill would be one step toward that goal.

Spending alternatives. Current versions of the state budget include increases to funding in many areas of vital state services. It is likely that both public education and transportation will receive additional funding. The state already is set to invest more, and the revenue lost under this bill would not be needed.

This bill could decrease the footprint of the government and allow Texans to make decisions about how they want to spend the money that are best for themselves and the economy. There always will be another government program to fund, and the state should adopt tax policies that allow it to focus on the programs and services that provide the greatest return on investment.

Revenue stability. Even with the property tax cut, the state would have sufficient revenue to meet its obligations in future biennia. The budget surplus in this biennium is likely to continue. Although oil prices and severance tax revenue are low, oil probably will not stay at its current price. If it does, the state is estimated to have about $11 billion in the rainy day fund at the beginning of the next biennium. The state still would have a fiscal cushion to rely on in the event of an unexpected decrease in tax revenue.

OPPONENTS SAY:

CSSB 1 would increase the homestead exemption at a time when that would not be the best use of state funds. The Legislature should instead cut other state taxes or appropriate the money to infrastructure, education, or other critical needs.

Aggregate impacts. Cutting property taxes would not directly benefit a large number of people. Renters — a sizable proportion of the low-income population — do not benefit from an increase in the homestead exemption. Other uses of these funds would provide more benefits to more Texans.

Microeconomic impacts. The Texas Constitution already prohibits increases to the total amount of property tax levied for general elementary and secondary public school purposes on a homestead of a person who is age 65 or older or disabled. A large population of those with fixed incomes are therefore protected from being taxed out of their homes.

Tax cut alternatives. A sales tax cut would be better for the Texas economy than an increase in the homestead exemption. Studies consistently show that sales taxes have a greater negative effect on economic activity than property taxes. The Legislative Budget Board estimates that over five years, a sales tax cut could create more than 42,000 more jobs and spark $5.2 billion more in GDP growth than an equivalent increase in the homestead exemption.

Cutting the franchise tax also would do more for the Texas economy than increasing the homestead exemption. Analysis from the Legislative Budget Board shows that a franchise tax cut would return nearly 40,000 more jobs and $5.7 billion more GDP over five years than an equivalent increase in the homestead exemption.

Local control. This bill would be tantamount to the Legislature taking ownership of what is essentially a local issue. The property tax is a fundamentally local tax necessitated by the fact that the state does not provide sufficient funding toward the state share of education. Voters are feeling pressured by rising property taxes driven by higher appraisals. But this should not be the case, since the cost to run the government is the same. For instance, if appraisals double, then revenue correspondingly

increases. Local governments, instead of pocketing this revenue increase, should decrease the effective tax rate. This bill would set a precedent for the state's responsibility in limiting what should be handled at the local level.

Because property taxes are fundamentally controlled by local governments, it is entirely possible that this tax cut could never reach the taxpayers. If appraisals go up as expected, it is likely that some taxpayers would not see their tax bills decline at all.

Education. This bill would increase the state share of education funding but would not actually increase school funding. The Legislature should implement school finance reforms that achieve both goals.

Spending alternatives. The bill could cost the state more than $1.2 billion in tax revenue during the 2016-17 biennium. This money can and should be spent elsewhere. The state has an obligation to adequately fund basic services that help protect Texas' future.

There are many ways to invest tax revenue that would save the state billions in future biennia. Studies show that every dollar spent on prekindergarten education saves the state anywhere from $3.50 to $7. This is because pre-kindergarten education decreases the likelihood of reliance on special education and social services in later years. Investments in this area also lead to increased high school graduation rates, leaving the state's economy more competitive and its workforce more educated. Funding for public education in general is still not back to pre-2011 levels, when the state cut a significant amount from school budgets. The state needs to fund this obligation before considering a tax cut.

Investing in transportation also would pay more dividends in the long run than a tax cut. The Texas A&M Transportation Institute found that delays and fuel costs as a result of congestion cost the state $10.1 billion and more than 472 million hours of travel time. TRIP, a national transportation research group, found that an inadequate transportation system costs Texas more than $23 billion per year, which includes costs from congestion, air pollution, and public safety. In other words, billions of dollars are lost every year because Texas does not properly fund its

transportation infrastructure

Revenue stability. This tax cut may not be sustainable. Severance tax revenue from oil and gas sales has increased significantly because of the shale oil boom. However, these severance taxes, as well as the state's revenue estimates, are heavily reliant on the price of oil rising. There is no guarantee of this happening, and numerous unpredictable geopolitical factors could affect the price of oil.

Some of the current surplus was left over from last session. The state has no guarantee of such a luxury in the 2018-19 biennium. Making tax cuts from a one-time influx of money would not be the most responsible approach because revenue is variable and tax cuts are permanent. The political climate of the state would not allow a tax hike, and this could leave the state in a difficult fiscal situation in future biennia, which might have to be solved by cutting vital state services.

OTHER OPPONENTS SAY:

Increasing the homestead exemption would be a positive step, but the bill should instead link the value of the exemption to the median value of a house in the state. This would allow the homestead exemption to absorb a portion of an increase in appraisal valuations, providing additional tax relief in future biennia.

NOTES:

According to the Legislative Budget Board, CSSB 1, if enacted in conjunction with CSSJR 1, would have a negative impact of more than $1.2 billion through fiscal 2016-17.

CSSB 1 differs from the engrossed Senate version in several ways. The bill would increase the homestead exemption to $25,000 instead of 25 percent of the median value of all homesteads in the state. It would not prohibit a taxing unit from reducing or repealing an optional homestead exemption for the next ten years, nor would it require a taxing unit to adopt a tax rate for the 2015 tax year by a certain date.

The committee substitute would require the assessor of a school district to calculate and publish on the tax bill a statement of the amount saved from the pending increase to the homestead exemption. The committee substitute also would provide that the taxes for which a supplemental tax

bill would be mailed under the provisions in the committee substitute would be due on receipt of the tax bill and would be delinquent if not paid before March 1 of the year following the year in which they were imposed. Finally, the bill would require a school district to waive penalties and interest on a delinquent tax for which a supplemental tax bill was mailed under the provisions of the committee substitute.

SUBJECT: Changing fund structure and board of directors of TWIA, requiring study

COMMITTEE: Insurance — committee substitute recommended

VOTE: 6 ayes — Muñoz, G. Bonnen, Guerra, Meyer, Paul, Workman

1 nay — Frullo

2 absent — Sheets, Vo

SENATE VOTE: On final passage, April 27 — 23-7 (Burton, Hall, Huffines, Nelson, Perry, V. Taylor, Uresti)

WITNESSES: *(On House companion bill, HB 2245)*
For — Ann Bracher Vaughan, Port Aransas Chamber of Commerce; Jeff Branick, Jefferson County; Brent Chesney, Nueces County; Foster Edwards, Corpus Christi Chamber of Commerce; Nelda Martinez, City of Corpus Christi; Diane Probst, Rockport-Fulton Chamber of Commerce-Coastal Bend Windstorm Coalition; Jim Rich, Greater Beaumont Chamber of Commerce; James Skrobarcyk, Builders Association Corpus Christi; Lee Zapp, Coastal Windstorm Insurance Coalition; Greg Smith; Jim Wade; (*Registered, but not testifying:* Les Findeisen, Texas Trucking Association; Daniel Gonzalez, Texas Association of Realtors; Colleen Mcintyre, City of Corpus Christi; David Mintz, Texas Apartment Association; Scott Norman, Texas Association of Builders; Dale Peddy, Entergy Texas; Stephen Scurlock, Independent Bankers Association of Texas; Roy Callais; Joe Daughtry; Mike Hamilton; Donna Wade)

Against — Fred Bosse, American Insurance Association; Beaman Floyd, Texas Coalition for Affordable Insurance Solutions; Josiah Neeley, R Street Institute; Bill Peacock, Texas Public Policy Foundation; Jay Thompson, Association of Fire and Casualty Companies of Texas (AFACT); (*Registered, but not testifying:* Kari King, USAA; John Marlow, ACE Group; Paul Martin, National Association of Mutual Insurance Companies; Anne O'Ryan, Interinsurance Exchange, Auto Club County Mutual; Joe Woods, Property Casualty Insurers Association of America)

On — Lee Deviney, Texas Public Finance Authority; John Polak, Texas Windstorm Insurance Association; Elisabeth Ret, Texas Department of Insurance; (*Registered, but not testifying:* Marilyn Hamilton and Brian Ryder, Texas Department of Insurance; John Hernandez, Texas Public Finance Authority; James Murphy, Texas Windstorm Insurance Association)

BACKGROUND:

Insurance Code, ch. 2210, governs the Texas Windstorm Insurance Association (TWIA). TWIA's primary purpose is to provide windstorm and hail insurance on the Texas coast as a residual insurer of last resort. TWIA's funding sources include insurance premiums, the Catastrophe Reserve Trust Fund, public securities, and reinsurance.

Ch. 2210, subch. M regulates public securities that can be used by TWIA to cover the costs of certain losses claimed. "Public security" includes a debt instrument issued by the Texas Public Finance Authority.

Under sec. 2210.051, all property insurers authorized to engage in the business of property insurance in Texas are required to be members of TWIA, unless by law they are unable to provide windstorm and hail insurance statewide.

Sec. 2210.052 requires the members of TWIA to participate in insured losses and operating expenses in excess of premiums and other revenue in proportionate amounts. The member's share would be in the proportion that the net direct premiums of that member from the prior year bears to the aggregate net direct premiums by all of the members.

DIGEST:

CSSB 900 would change the funding structure of the Texas Coastal Insurance Association (TCIA), currently known as the Texas Windstorm Insurance Association. The bill also would change the composition of the board of directors and require a biennial study.

Funding structure. The bill would specify the order of funds to be used to pay for losses not covered by TCIA premiums, other revenue, or the Catastrophe Reserve Trust Fund (CRTF) in a catastrophe year where an occurrence caused insured losses in a catastrophe area as designated by

the commissioner of insurance (commissioner). TCIA would pay losses in order from:

- proceeds of class 1 public securities issued on or before June 1, 2015;
- class 1 member assessments not to exceed $500 million per year;
- proceeds of class 2 public securities not to exceed $250 million per year issued on or after the date of the occurrence;
- class 2 member assessments not to exceed $250 million per year;
- proceeds of class 3 public securities not to exceed $250 million per year issued on or after the date of the occurrence;
- class 3 member assessments not to exceed $250 million per year; and
- reinsurance and alternative risk financing mechanisms.

If member assessments were used to cover losses, regardless of the class, the bill would require TCIA, with the approval of the commissioner to notify each member of the amount of their assessment. The assessment would be determined by the same method used to determine each member's share of insured losses and operating expenses. A member could not recoup an assessment through a premium surcharge or tax credit.

Public security obligations. TCIA is required under current law to repay public security obligations that it incurs. class 1, 2, and 3 public securities would be paid first from TCIA's net premiums and other revenue. class 2 and 3 public securities then would be paid with a catastrophe area premium surcharge, if net premium and other revenues were not sufficient to pay the securities, not member assessments as under current law.

The premium surcharge noted above would be assessed to each holder of a TCIA policy. The amount of the premium surcharge would have to be sufficient to pay relevant debts not covered by available funds. Failure of a policyholder to pay the premium surcharge would be same as failing to pay a premium for purposes of policy cancellation.

Board of directors. The bill would abolish the current board of directors

appointed by the commissioner, and the terms of the members serving on the board would expire on October 1, 2015. The bill would create a new board to include:

- three members from the insurance industry who actively wrote and renewed windstorm and hail insurance in certain counties located near the coast;
- three members who resided in those counties, one of whom was a licensed property and casualty agent; and
- three members from an area of the state located more than 200 miles from the coastline.

The commissioner also would be required to appoint three non-voting ex officio members to advise the board. These members would hold a state or political subdivision elective office. One member would reside in the northern portion of the seacoast territory, another in the southern portion, and the third in an area not located in the seacoast territory.

Reinsurance and alternative risk financing. The bill would specify that the CRTF could be used only for purposes directly related to funding the payment of insured losses, the payment of catastrophe losses not covered by premiums or other revenue, and purchasing reinsurance or an alternative risk financing mechanism.

The bill would require TCIA to purchase reinsurance or alternative risk financing mechanisms in an amount sufficient to cover the probable maximum loss for a catastrophe year with a probability of one in 100. That amount would be used only if the other fund sources did not cover the insured losses resulting from the one-in-100 year storm.

Biennial study. The bill would require the Texas Department of Insurance to conduct a biennial study of market incentives to promote participation in the voluntary windstorm and hail insurance market in the Texas seacoast territory. The results would be included in the report submitted to the Legislature each biennium.

Management. The bill would allow the commissioner to contract with a licensed or certificated administrator to manage TCIA and administer the

required plan of operation. The contract would be required to be in the best interest of policyholders and the public.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 900 would protect the future of the coast by providing a reliable funding structure, changing the composition of the board of directors, and requiring the Texas Coastal Insurance Association (TCIA) to conduct a study to improve market incentives.

TCIA funding. The bill would provide reliable and predictable financing by changing the order of funds used by TCIA to pay catastrophe losses, beginning with premiums, revenue, and the Catastrophe Reserve Trust Fund, then class 1 public securities issued before June 1. Next, class 1 member assessments would be used, which would be less expensive because there would not be associated fees and interest, as with bonds.

The bill would ensure that TCIA had the funds needed for a one-in-100 year storm in any given year. This would benefit all Texans because it would prevent market disruption in the aftermath of a storm.

CSSB 900 would reduce TCIA's reliance on bonds by changing the order of funds used, which would lower inland costs. The repayment of certain public securities would be covered by catastrophe area premium surcharges. This would ensure that coastal policyholders would bear the majority of risk in the event of a catastrophic storm.

Board of directors. The bill would change the composition of the board of directors to include more members from outside the coast area and insurance industry to offer the perspective of the public and better guide decisions. This would balance the interests of all stakeholders in the state and strengthen statewide input on decisions related to policymaking, rate setting, and financial operations.

Biennial study. The best way for TCIA to act as an insurer of last resort is to increase voluntary participation in the windstorm and hail insurance

industry. The bill would require TCIA to conduct a biennial study of market incentives to spur innovative solutions to create a competitive marketplace. This would result in a voluntary depopulation of TCIA and would reduce state reliance on it.

OPPONENTS SAY:

TCIA funding. CSSB 900 would not solve the problems with TCIA's funding and could increase costs statewide. The bill would increase the costs for inland policyholders by increasing TCIA's reliance on member assessments to pay catastrophe losses. Member assessments would be used early in TCIA's funding structure, and the members would build the assessments into rates and premiums charged to their policyholders.

The bill also would not help TCIA become an insurer of last resort because it does not charge market rates. This is why its premiums do not cover more expenses and why there are not more insurance providers stepping into the windstorm and hail insurance industry. Other providers are unable to compete with the below-average rates. If TCIA charged appropriate premiums, it would not need to use bonds or assess members in the event of a catastrophe because it would have sufficient funds in the form of revenue and premiums.

The bill would force all Texans to bear the financial burden that belongs solely to the coast, an area whose inherent risks are well known. Statewide funding should not be used to build homes in hurricane zones where the risk of property damage is obvious. It is not appropriate for the government to sponsor insurance.

Board of directors. The bill would change the composition of the board of directors to weigh heavily in favor of coastal residents by requiring six of the nine members to either reside or work in certain coastal counties. This imbalance in power would allow the coastal majority to run the board and make decisions in their favor, such as not allowing rate increases.

NOTES:

The House companion bill, HB 2245 G. Bonnen, was considered in a public hearing of the House Committee on Insurance on April 22 and left pending.

SUBJECT: Increasing population threshold for counties to do private road work

COMMITTEE: County Affairs — favorable, without amendment

VOTE: 7 ayes — Coleman, Farias, Romero, Schubert, Spitzer, Stickland, Wu

0 nays

2 absent — Burrows, Tinderholt

SENATE VOTE: On final passage, April 16 — 31-0

WITNESSES: (*On House companion bill, HJR 41*)
For — Jim Allison, County Judges and Commissioners Association of Texas; (*Registered, but did not testify:* Don Allred, Oldham County and the Texas Association of Counties; Robert Bass, County Judges and Commissioners Association of Texas; Kaleb McLaurin, Texas and Southwestern Cattle Raisers Association; Rick Thompson, Texas Association of Counties)

Against — (*Registered, but did not testify:* Clarence Clark)

BACKGROUND: Texas Constitution, Art. 3, sec. 52f allows a county with a population of 5,000 or less, according to the most recent federal census, to construct and maintain private roads if it imposes a reasonable charge for the work. The Legislature by general law is authorized to limit this authority. Revenue received from private road work may be used only for the construction, including right-of-way acquisition, or maintenance of public roads.

DIGEST: SJR 17 would amend Texas Constitution, Art. 3, sec. 52f to increase from 5,000 to 7,500 the maximum population limit for a county to be able to construct and maintain private roads if it imposes a reasonable charge for the work.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2015. The ballot proposal would read: "The constitutional amendment to authorize counties with a population of 7,500 or less to

perform private road construction and maintenance."

SUPPORTERS SAY:

SJR 17 would update a provision of the Texas Constitution set in 1980 governing the maximum population of a county allowed to construct and maintain private roads. Small counties in Texas have grown since that time, and the Constitution should be updated to reflect population growth over the past 25 years.

This bill would give counties and private landowners more flexibility to update roads that are poorly maintained because many small counties rarely have private contractors available to do the work. Poorly maintained roads create public safety hazards for citizens and emergency services. Private landowners still would have the flexibility to hire a private company instead of the county if they chose to do so.

The bill would include an additional 21 counties that have a population under 7,500. Most of these counties were under the 5,000-person threshold at the time the constitutional provision was passed in 1980. Some of these counties have passed the 5,000-person threshold only because a prison was added that increased the county's population.

The population cap placed on the counties is necessary to prevent all counties in the state from competing with private industry. However, in the small counties that would be covered by SJR 17, there are no private industries to compete with, and counties should be allowed to deal with minor projects to maintain road safety. It would not be profitable for private companies to travel to small counties for minor projects.

OPPONENTS SAY:

Instead of increasing the maximum population allowed under this article, the population limit should be eliminated. All counties in the state should have the option to construct and maintain their roads as long as private landowners agree and pay the county for the cost of the work.

NOTES:

According to the Legislative Budget Board's fiscal note, the cost to the state of publishing the resolution would be $118,681.

SUBJECT: Providing for an increase in the homestead exemption

COMMITTEE: Ways and Means — committee substitute recommended

VOTE: 10 ayes — D. Bonnen, Y. Davis, Bohac, Button, Darby, Martinez Fischer, Murphy, Parker, Springer, C. Turner

0 nays

1 absent — Wray

SENATE VOTE: On final passage, March 25 — 23-8 (Ellis, Eltife, Garcia, Rodriguez, Watson, West, Whitmire, Zaffirini)

WITNESSES: For — Michael Openshaw, North Texas Tea Party; (*Registered, but did not testify*: Kinnan Golemon, Devon Energy, Shell Oil Company; Dustin Matocha, Empower Texans; Julie McCarty, NE Tarrant Tea Party; Mark Ramsey, Republican Party of Texas; Daniel Gonzalez and Steven Garza, Texas Association of Realtors; George Allen, Texas Apartment Association; Ned Munoz, Texas Association of Builders; and eight individuals)

Against — Chris Frandsen, League of Women Voters of Texas; Dale Craymer, Texas Taxpayers and Research Association; (*Registered, but did not testify*: James LeBas, AECT, TXOGA; Adrian Acevedo, Anadarko Petroleum Corp.; Tom Sellers, ConocoPhillips; Martin Allday, Enbridge Energy; Amy Maxwell, Marathon Oil Corporation; Richard A. (Tony) Bennett, Texas Association of Manufacturers; Bill Hammond, Texas Association of Business; Hector Rivero, Texas Chemical Council; Mari Ruckel, Texas Oil and Gas Association; Ronnie Volkening, Texas Retailers Association; John W. Fainter Jr., The Association of Electric Companies of Texas, Inc.)

On — Dick Lavine, Center for Public Policy Priorities; Ashley Fischer, Secretary of State; Ro'Vin Garrett, Tax Assessor Collectors Association of Texas; Karey Barton, Comptroller of Public Accounts; Wayne Pulver, Texas Legislative Budget Board; Christy Rome, Texas School Coalition

BACKGROUND:

Texas Constitution, Art. 8, sec. 1-b(c) requires a school district to exempt $15,000 of the value of a residence homestead from taxation. A school district must grant an additional $10,000 exemption from the appraised value of a residence homestead for adults who are disabled or more than 65 years old.

Texas Constitution, Art. 8, sec. 1-b(d) prohibits certain increases in the total amount of property tax levied for general elementary and secondary public school purposes on a homestead of a person or the spouse of a person who is 65 or older or disabled.

DIGEST:

CSSJR 1 would amend Texas Constitution, Art. 8, sec. 1-b to increase the mandatory homestead exemption from $15,000 to $25,000. The taxable value of homesteads owned by the elderly or people who are disabled also would be correspondingly reduced.

These provisions would take effect January 1, 2015, and would apply only to a tax year beginning on or after that date.

The ballot proposal would be presented to voters at an election on November 3, 2015. The ballot proposal would read: "The constitutional amendment increasing the amount of the residence homestead exemption from ad valorem taxation for public school purposes from $15,000 to $25,000 and providing for a reduction of the limitation on the total amount of ad valorem taxes that may be imposed for those purposes on the homestead of an elderly or disabled person to reflect the increased exemption amount."

SUPPORTERS SAY:

CSSJR 1 would cut property taxes by increasing the homestead exemption, which is the best possible use of state funds. It would stimulate real economic growth and provide tax relief that voters have asked for and to those who need it most.

Aggregate impacts. This tax cut would result in a broad reduction in the effective tax burden borne by Texans. In so doing, it could stimulate consumption, which drives job growth. Job growth, in turn, stimulates more consumption. The consumer, not the government, is the most economically efficient agent. Increasing the homestead exemption would

put more money in consumers' pockets, allowing more money to be used more efficiently in the economy.

Because the property tax is imposed on living spaces, virtually everyone in the state pays the property tax in some manner. Homeowners pay directly, and renters pay it through higher prices as landlords pass on the cost. Although the homestead exemption would not directly benefit renters, it would drive down the cost of owning a home, which could reduce demand for rental property and reduce rents overall. This means that all tax relief delivered by this joint resolution would go directly to a broad range of individuals. Cutting property taxes would put money in the hands of people, whereas the entirety of a franchise tax cut and more than 40 percent of a sales tax cut would go to businesses.

Tax cut alternatives. The Legislature should cut the property tax because it is by far the most onerous and noticeable tax. It is a tax upon the ownership of property, one of the most fundamental rights that people have. Voters frequently ask for property tax cuts, but rarely are overly burdened by the sales tax and only see the secondary effects of the franchise tax. The Legislature should do what the voters elected lawmakers to do.

If the Legislature were to enact a homestead exemption linked to the median value of a home in the state, the tax base would gradually shift onto businesses. Businesses already pay property taxes, sales taxes, and franchise taxes. The Legislature should avoid tax reforms that shift the tax burden from one side of the economy to the other.

The joint resolution should not include a prohibition on applying the sales tax to real estate transactions. Such a provision unnecessarily would handicap the Legislature and present a high risk of unintended consequences, because the state does not, nor plans to, levy such a tax.

Microeconomic impacts. The property tax is not related to income or consumption, so it can have an intensely negative impact on those with fixed incomes. If appraisal values rise significantly and tax rates are not adjusted downward, people on a fixed income could find themselves priced out of their own homes. This phenomenon is particularly common

in areas with strong economic growth, where demand for housing is strong.

Data from the comptroller's *Tax Exemptions and Tax Incidence* report indicates that homestead exemptions particularly benefit low-income individuals. This is because a homestead exemption exempts a higher percentage of the total value of a less expensive house.

Local control. These tax cuts would have a significant benefit to taxpayers that would not be taken away by local governments. Increases in property taxes can happen in two ways: rate increases and appraisal increases. Rate increases are unlikely to happen, because most school districts are required to gain voter approval for increases in property tax rates. Increases in appraisals are a good thing, since they demonstrate that demand for housing in Texas is growing and home values are rising. Although the tax imposed on a property could go up due to rising appraisal values even with this joint resolution, the proposed amendment would significantly reduce the size of the increase, delivering needed tax relief to Texans who might otherwise be slowly priced out of their homes.

Education. Increasing the homestead exemption in conjunction with the enactment of CSSB 1 would increase the state share of education funding. The Legislature should strive to fulfill its obligations and fully and completely fund public education instead of relying on local funding, which has caused the problem of skyrocketing property taxes. Pending litigation may result in the state being required to increase its contribution. This joint resolution would be one step toward that goal.

Spending alternatives. Current versions of the state budget include increases to funding in many areas of vital state services. It is likely that both public education and transportation would receive additional funding. The state already is set to invest more, and the revenue lost under this joint resolution would not be needed.

This joint resolution could decrease the footprint of the government and allow Texans to make decisions about how they want to spend the money that are best for themselves and the economy. There always will be another government program to fund, and the state should adopt tax

policies that allow it to focus on the programs and services that provide the greatest return on investment.

Revenue stability. Even with the property tax cut, the state would have sufficient revenue to meet its obligations in future biennia. The budget surplus in this biennium is likely to continue. Although oil prices and severance tax revenue are low, oil probably will not stay at its current price. If it does, the state is estimated to have about $11 billion in the rainy day fund at the beginning of the next biennium. The state still would have a fiscal cushion to rely on in the event of an unexpected decrease in tax revenue.

OPPONENTS SAY:

CSSJR 1 and its enabling legislation would increase the homestead exemption at a time when that would not be the best use of state funds. The Legislature instead should cut other state taxes or appropriate the money to infrastructure, education, or other critical needs.

Aggregate impacts. Cutting property taxes would not directly benefit a large number of people. Renters — a sizable proportion of the low-income population — do not benefit from an increase in the homestead exemption. Other uses of these funds would provide more benefits to more Texans.

Microeconomic impacts. The Texas Constitution already prohibits increases to the total amount of property tax levied for general elementary and secondary public school purposes on a homestead of a person who is age 65 or older or disabled. A large population of those with fixed incomes are therefore protected from being taxed out of their homes.

Tax cut alternatives. A sales tax cut would be better for the Texas economy than an increase in the homestead exemption. Studies consistently show that sales taxes have a greater negative effect on economic activity than property taxes. The Legislative Budget Board estimates that over five years, a sales tax cut could create more than 42,000 more jobs and spark $5.2 billion more in GDP growth than an equivalent increase in the homestead exemption.

Cutting the franchise tax also would do more for the Texas economy than

increasing the homestead exemption. Analysis from the Legislative Budget Board shows that a franchise tax cut would return nearly 40,000 more jobs and $5.7 billion more GDP over five years than an equivalent increase in the homestead exemption.

Local control. This joint resolution would be tantamount to the Legislature taking ownership of what is essentially a local issue. The property tax is a fundamentally local tax necessitated by the fact that the state does not provide sufficient funding toward the state share of education. Voters are feeling pressured by rising property taxes driven by higher appraisals. But this should not be the case, since the cost to run the government is the same. For instance, if appraisals double, then revenue correspondingly increases. Local governments, instead of pocketing this revenue increase, should decrease the effective tax rate. This joint resolution would set a precedent for the state's responsibility in limiting what should be handled at the local level.

Because property taxes are fundamentally controlled by local governments, it is entirely possible that this tax cut could never reach the taxpayers. If appraisals go up as expected, it is likely that some taxpayers would not see their tax bills decline at all.

Education. This joint resolution, in conjunction with CSSB 1, would increase the state share of education funding but would not actually increase school funding. The Legislature should implement school finance reforms that achieve both goals.

Spending alternatives. The joint resolution could cost the state more than $1.2 billion in tax revenue during the 2016-17 biennium. This money can and should be spent elsewhere. The state has an obligation to adequately fund basic services that help protect Texas' future.

There are many ways to invest tax revenue that would save the state billions in future biennia. Studies show that every dollar spent on prekindergarten education saves the state anywhere from $3.50 to $7. This is because pre-kindergarten education decreases the likelihood of reliance on special education and social services in later years. Investments in this area also lead to increased high school graduation rates, leaving the state's

economy more competitive and its workforce more educated. Funding for public education in general is still not back to pre-2011 levels, when the state cut a significant amount from school budgets. The state needs to fund this obligation before considering a tax cut.

Investing in transportation also would pay more dividends in the long run than a tax cut. The Texas A&M Transportation Institute found that delays and fuel costs as a result of congestion cost the state $10.1 billion and more than 472 million hours of travel time. TRIP, a national transportation research group, found that an inadequate transportation system costs Texas more than $23 billion per year, which includes costs from congestion, air pollution, and public safety. In other words, billions of dollars are lost every year because Texas does not properly fund its transportation infrastructure

Revenue stability. This tax cut may not be sustainable. Severance tax revenue from oil and gas sales has increased significantly because of the shale oil boom. However, these severance taxes, as well as the state's revenue estimates, are heavily reliant on the price of oil rising. There is no guarantee of this happening, and numerous unpredictable geopolitical factors could affect the price of oil.

Some of the current surplus that the joint resolution's enabling legislation would use to pay for the more generous homestead exemption was left over from last session. The state has no guarantee of such a luxury during fiscal 2018-19. Making tax cuts from a one-time influx of money would not be the most responsible approach because revenue is variable and tax cuts are comparatively permanent. The political climate of the state would not allow a tax hike, and this could leave the state in a difficult fiscal situation in future biennia, which might have to be solved by cutting vital state services.

OTHER OPPONENTS SAY:

Increasing the homestead exemption would be a positive step, but the joint resolution should instead link the value of the exemption to the median value of a house in the state. This would allow the homestead exemption to absorb a portion of an increase in appraisal valuations, providing additional tax relief in future biennia.

This proposed constitutional amendment also should include provisions to prevent the expansion of the sales tax to apply to real estate transfers, which would create another transaction cost in an already onerous and regulated process.

NOTES:

According to the Legislative Budget Board, CSSJR 1, if approved in conjunction with the enactment of CSSB 1, would have a negative impact of more than $1.2 billion during fiscal 2016-17. The cost to the state for publishing the resolution would be $118,681.

CSSJR 1 differs from the engrossed Senate version in several ways. It would increase the mandatory homestead exemption to $25,000 instead of 25 percent of the median value of all homesteads in the state. It would not exempt from the spending cap any funds appropriated by the Legislature for this increase in the homestead exemption, as the engrossed Senate version did. It also would not prohibit a real estate transfer tax, nor would it allow the Legislature to prohibit a taxing unit from repealing or reducing an existing optional homestead exemption. It would be subject to an election on November 3, 2015, instead of September 12, 2015.

SUBJECT: Providing birth records at no cost for election identification certificate

COMMITTEE: Public Health — favorable, without amendment

VOTE: 8 ayes — Crownover, Naishtat, Blanco, Guerra, R. Miller, Sheffield, Zedler, Zerwas

0 nays

3 absent — Coleman, Collier, S. Davis

SENATE VOTE: On final passage, May 11 — 31-0

WITNESSES: No public hearing

BACKGROUND: Election Code, sec. 63.001 requires a voter to present a form of identification to be able to vote. Sec. 63.0101 lists an election identification certificate as an acceptable form of photo identification.

Transportation Code, sec. 521A.001 requires the Department of Public Safety to issue an election identification certificate to a person who wishes to vote, does not have another form of acceptable photo identification required to vote, and is either registered or eligible for registration to vote. A person must provide proper verification of identity to be issued a certificate. The certificate is issued at no cost.

Health and Safety Code, sec. 191.0046 provides for certain fee exemptions for the issuance of a birth certificate. These exemptions include a certificate necessary for admission to school or to secure employment, for a veteran's widow or dependent to settle claims, and for review of a child fatality.

DIGEST: SB 983 would prohibit the state registrar, a local registrar, or a county clerk from charging a fee to an applicant for searching for or providing a record, including a birth certificate, if the applicant stated that the applicant was requesting the record to obtain an election identification certificate.

The bill would entitle a local registrar or a county clerk who issued a birth record for the purpose of obtaining an election identification certificate to payment of all or a portion of the fee for that record from the Department of State Health Services that they would otherwise be entitled to retain for issuing the birth record.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015. The bill would apply only to an application for a certified copy of a birth record filed on or after the effective date.

SUPPORTERS SAY:

SB 983 would allow an individual to obtain at no cost the proper identification required to be able to vote in Texas. Currently, Texas voters must show an acceptable photo identification to be eligible to vote. While the election identification certificate would be an appropriate photo identification, individuals must show verification of identity to receive the certificate. Obtaining verification of identity, such as a birth certificate, can require a fee. This bill would allow individuals to obtain a birth certificate to verify their identity for the election identification certificate at no cost.

The bill would not cover the cost of obtaining a birth certificate for individuals born outside of the state because the Texas Legislature cannot regulate the costs imposed by other states for birth records. This bill would cover a large majority of Texans who are eligible to vote in this state.

OPPONENTS SAY:

SB 983 would not go far enough in addressing all of the costs that are imposed on Texans for the purpose of obtaining an election identification certificate. The bill would not address the cost that Texans who were born out of the state would have to incur for obtaining their birth certificate.

SUBJECT: Grant program, policies for law enforcement body camera programs

COMMITTEE: Emerging Issues in Texas Law Enforcement, Select — committee substitute recommended

VOTE: 5 ayes — Fletcher, Flynn, Koop, Martinez, J. White

0 nays

2 absent — Dukes, Márquez

SENATE VOTE: On final passage, April 23 — 22-8 (Burton, Campbell, Creighton, Hancock, Huffman, Kolkhorst, Nichols, V. Taylor)

WITNESSES: For — Jason Dusterrhoft, Austin Police Department; Chris Jones, Combined Law Enforcement Associations of Texas (CLEAT); Gary Tittle, Dallas Police Department; Jessica Anderson, Houston Police Department; Vincent Harding; (*Registered, but did not testify*: Frank Dixon, Austin Police Department; T.J. Patterson, City of Fort Worth; John Kreager, Texas Criminal Justice Coalition; Joshua Houston, Texas Impact; Yannis Banks, Texas NAACP; Lon Craft, Texas Municipal Police Association)

Against —None

On — Justin Gordon, Office of the Attorney General; (*Registered, but did not testify*: John Helenberg, Texas Commission on Law Enforcement; William Diggs, Texas Department of Public Safety)

DIGEST: CSSB 158 would establish a grant program through the governor's office for local law enforcement agencies to help defray the cost of body worn cameras for law enforcement officers and would establish requirements for law enforcement agency policies for the cameras.

State grants for body worn camera programs. CSSB 158 would authorize municipal police departments, sheriffs, and the Department of Public Safety to apply to the governor's office for grants to defray the cost

of implementing the bill and to equip peace officers with body worn cameras. This would apply to law enforcement agencies that employed officers who were engaged in traffic or highway patrol, regularly detained or stopped motor vehicles, or were primary responders. Sheriffs would need the approval of their commissioners court to apply for a grant.

The governor's office would be required to create and implement a matching grant program with federal, state, local, and other funding sources. Local law enforcement agencies would have to match 25 percent of any grant received from the governor's office, but DPS would not be required to match the grants.

Law enforcement agencies would be required to report annually to the Texas Commission on Law Enforcement (TCOLE) about the costs of a body worn camera program. The commission would be required to compile the information and report it to the governor and Legislature by December 1 annually.

Local policies. Law enforcement agencies that received a state grant for body worn cameras or that operated a program with the cameras would have to adopt a policy on their use. The policy would have ensure that a camera was activated only for law enforcement purposes and could not require that the cameras be activated for the entire period of an officer's shift. The policies would have to include:

- guidelines on activating and discontinuing a recording;
- provisions for data retention, including requiring a minimum of 90 days retention;
- provisions for storage, backup, and security of the recordings;
- guidelines for public access to recordings that were public information;
- provisions for officer access to recordings before an officer had to make a statement about an incident that was recorded;
- procedures for supervisory or internal review; and
- handling and documenting equipment and equipment malfunctions.

The bill would authorize law enforcement agencies to enter into

interagency or interlocal contracts to receive body worn camera services and have certain operations performed through a Department of Information Resources program.

The bill would restrict the use of personally owned equipment and establish requirements for agencies that authorized the use of privately owned equipment.

Training. The bill would require the training of officers and other personnel who would work with the cameras and their data. TCOLE, in consultation with other entities, would be required to develop or approve a training curriculum by January 1, 2016.

Interactions with the public. Peace officers equipped with the cameras would be required to act consistent with their agency's policy on when a camera would have to be activated. Officers would be authorized to choose to deactivate a camera or discontinue recording for any non-confrontational encounter with a person, including witnesses and victims. Officers choosing not to activate a camera in response to a call for help would have to note the reason for non-activation.

Handling of recordings. Recordings documenting an incident involving the use of deadly force by a peace officer or that were related to a criminal or administrative investigation of an officer could not be deleted, destroyed, or released to the public until all criminal matters had been finally adjudicated and all investigations concluded. Such recordings could be released to the public if the agency determined that the release furthered a law enforcement purpose.

Release of recordings. The bill would establish requirements for what would have to be in requests from the public for the recordings, including the date and approximate time of the recording, the location, and the name of one or more persons known to be a subject of the recording.

Information recorded by a body camera and held by a law enforcement agency would not be subject to disclosure under the Public Information Act requirements in Government Code, sec. 552.021, except that information that was or could be used as evidence in a criminal

prosecution would be subject to the requirements.

Law enforcement agencies could seek to withhold public information under current provisions that allow certain information to be withheld from public disclosure. The agencies could assert any exceptions to disclosure that are currently in Government Code, ch. 552 or other law, or they could release information in a redacted form.

The bill would prohibit the release of certain types of recordings, including ones made in private spaces and those involving fine-only misdemeanors that do not result in arrests. These recordings could be released upon consent of the subject of the recording.

The attorney general would be required to set a proposed fee for members of the public seeking to obtain a copy of a recording.

The bill would lengthen the deadlines in current law for responses to requests for information when a law enforcement agency asked the attorney general whether a request was excepted from public disclosure. Law enforcement agencies would have 20 days, instead of the current 10, from the date of a request to ask the attorney general whether the recording fell within an exception to required public disclosure. Agencies also would have 20 days, instead of the current 10, to give a response to a requestor of the information. The bill would extend other deadlines for submitting information and comments about the request to the attorney general and for giving the requestor the comments given to the attorney general. These deadlines would be extended from 15 days to 25 days.

The bill also would adjust the deadline for agencies to respond to a public information request for a recording if the request was considered voluminous under criteria that would be established by the bill. The agency would be considered to be in compliance with requirements to promptly produce information if it took the required actions within 21 days. The bill would define voluminous requests as including:

- a request for recordings from more than five separate incidents;
- more than five requests from the same person in a 24-hour period; or

- a request or multiple requests from the same person in a 24-hour period that when taken together would constitute more than five hours of footage.

Offense. It would be class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000) offense for a peace officer or other law enforcement agency employee to release a recording from a camera without the permission of the law enforcement agency.

The bill would take effect September 1, 2015. Agencies operating a body worn camera program on that date would not be required to adopt or implement a policy that complied with the bill or to implement the bill's required training program before September 1, 2016.

SUPPORTERS SAY:

CSSB 158 would help ensure that law enforcement agencies that elect to use body cameras developed policies within the same broad framework and would allow the state to offer support to those agencies through a grant program. The bill would not mandate the use of cameras, allowing that decision to continue to be made on the local level.

The use of recording devices worn by peace officers can help both the public and the police by documenting encounters. The equipment has been part of a recent national debate over law enforcement interactions with the public and can contribute to reductions in complaints against police officers, the use of force, and lawsuits filed against police.

CSSB 158 would support agencies that would like to use the cameras by establishing a grant program. The grants could be used to help the agencies with the cost of equipping officers and could be used to defray any costs associated with a program, including the costs of data storage. The grant program could use funding from the governor's office as well as federal funds but would require a match by local agencies. The interagency and interlocal agreements that would be authorized by the bill also could help agencies defray the costs of body camera programs and data storage, including through a program established by the Department of Information Resources.

CSSB 158 would recognize that as the use of cameras grows, there is a

need for a statewide framework for local policies. Some uniformity across the state is necessary to ensure that local policies address common, issues and that the policies properly balance concerns about the use of cameras.

The bill would meet this need by broadly outlining what would have to be addressed in local policies on the use of body cameras but allowing details about the policies to be established at the local level. This would give local agencies the necessary flexibility to develop policies to meet their needs. For example, a local policy would determine when officers should turn the cameras on and off. Localities currently using the cameras could submit their policy to TCOLE for review and make any necessary adjustments to meet the bill. CSSB 158 also would support local law enforcement agencies by having TCOLE collaborate with other entities to develop a training curriculum.

The bill would address privacy concerns of both officers and the public by allowing cameras to be deactivated for non-confrontational encounters with witnesses and victims and prohibiting the release of recordings made in private spaces and those involving fine-only misdemeanors that do not result in arrests.

CSSB 158 would address concerns about agencies' ability to meet open records requests by lengthening deadlines for responses to the requests and establishing guidelines for handling voluminous requests. Within the guidelines in the bill, agencies could set parameters on what was recorded so that they would not be overwhelmed by data.

CSSB 158 would not create a long-term funding obligation for the state. In 2017, the Legislature could evaluate the use of state funds under the bill and make a decision about continued funding.

OPPONENTS SAY:

A state law on the use of body cameras by law enforcement officers is unnecessary and could infringe on local policies designed to meet local needs. Given the emerging nature of the use of body cameras and the many unresolved issues with their use, it would be premature to establish a statewide framework on how the equipment and data should be handled. For example, there are unanswered questions related to privacy and the handling of large amounts of data that could be produced by the cameras.

Local agencies are in the best position to craft such policies, and they should continue to be able to develop standards and practices tailored to meet their needs without being required to meet certain guidelines.

The state should not set up a situation in which it could have an ongoing obligation to local law enforcement agencies for their body camera programs or in which it imposed costs on those programs. The cost of outfitting officers with cameras, storing the data, responding to requests for the recordings, and maintaining the equipment would be high, and local agencies could look to the state as the resource for these expenses if the state required certain policies.

SUBJECT: Removing requirements for funding certain water supply projects

COMMITTEE: Natural Resources — favorable, without amendment

VOTE: 11 ayes — Keffer, Ashby, D. Bonnen, Burns, Frank, Kacal, T. King, Larson, Lucio, Nevárez, Workman

0 nays

SENATE VOTE: On final passage, April 14 — 31-0

WITNESSES: (*On House companion bill, HB 1222*)
For — (*Registered, but did not testify:* Buddy Garcia; TJ Patterson, City of Fort Worth; Daniel Gonzalez and Steven Garza, Texas Association of Realtors; Perry Fowler, Texas Water Infrastructure Network)

Against — None

On — (*Registered, but did not testify:* Joe Reynolds, Texas Water Development Board)

DIGEST: SB 1337 would amend Texas Water Code, sec. 16.053(j), which allows the Texas Water Development Board to provide financial assistance to political subdivisions for water supply projects under certain circumstances. The bill would remove the requirements that water projects under certain programs in chapter 15 be consistent with the state water plan and that the applicant complete a water audit.

SB 1337 also would amend sec. 16.053(j) to specifically apply these requirements to water projects under ch. 15, subch. J, if the financial assistance was under the safe drinking water revolving fund.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2015.

SUPPORTERS SAY: SB 1337 would clean up Texas Water Code by removing outdated

requirements that water projects under certain programs in chapter 15 be consistent with the state water plan and that the applicant complete a water audit. The Texas Water Development Board provides funding for water supply projects through various water assistance programs under chapter 15, and the subchapter designations for water assistance programs under that chapter were made more than 15 years ago. Since then, programs have been added, others have been changed, and some have never been funded.

SB 1337 would remove the requirement of consistency with the state water plan and the water audit requirement from programs under subchapters D and F because they have become funding mechanisms that do not provide direct funding. The bill would remove such requirements for programs under subchapter O because they have never received funding.

Also, the bill would supply needed clarification for projects under ch. 15, subch. J, regarding financial assistance for water pollution control programs. Financial assistance for such programs provides funding for both wastewater projects and drinking water projects, but the state water plan only funds water supply projects. The bill would make clear that requirements that projects be consistent with the state water plan and that a water audit be completed apply only to drinking water projects, not to wastewater projects.

OPPONENTS SAY:

No apparent opposition.

NOTES:

The House companion bill, HB 1222 by Lucio, was placed on the General State Calendar for May 12, but not considered.

SUBJECT: Requiring fingerprint checks for certain child-care providers

COMMITTEE: Human Services — favorable, without amendment

VOTE: 9 ayes — Raymond, Rose, Keough, S. King, Klick, Naishtat, Peña, Price, Spitzer

0 nays

SENATE VOTE: On final passage, April 22 — 29-1 (Huffines)

WITNESSES: No public hearing

BACKGROUND: The Child Care and Development Block Grant Act of 2014 requires states to conduct criminal background screenings with fingerprint checks for all staff members of child care providers, including those who do not directly care for children but have unsupervised access to them.

Currently, the Department of Family and Protective Services (DFPS) does not require a fingerprint checks for those operating registered child-care homes, licensed child-care homes, or listed family homes with certain exceptions.

DIGEST: SB 1496 would require the director, owner, or operator of a listed or registered home and group day-care home to submit a complete set of fingerprints of certain individuals affiliated with the facility who are required to receive a background check under current law. These individuals include:

- the director, owner, and operator of the facility, agency, or home;
- each person employed at the facility, agency, or home;
- each prospective employee of the facility, agency, or home; and
- each person at least 14 years of age who was counted in child-to-caregiver ratios in accordance with the minimum standards of the department or had unsupervised access to children in care at the facility or family home, including those who resided in the facility or family home.

The new requirement would not apply to a family home in which care was provided only to children related to the provider.

SB 1496 also would require listed family homes, in addition to licensed child care facilities and registered family homes, to pay the department a fee that would not exceed the administrative cost incurred for the required background and criminal history check.

The bill would take effect September 1, 2016.

SUPPORTERS SAY:

SB 1496 would improve safety for children in certain day care settings by providing extra assurance that they were not exposed to individuals who might do them harm. Many Texas children, especially those 3 years old and younger, receive child care in smaller family home settings. It is important that all caregivers of this vulnerable age group, including those who care for smaller groups of children in listed or registered private homes, be screened in the same way that other caregivers are. Listed and registered family homes have significantly fewer requirements imposed on them by DFPS compared to licensed facilities. Therefore, these settings are subject to less oversight, for example, in the form of site inspections.

The bill also would ensure that federal funds continued to be available to the state under the Child Care and Development Block Grant Act because this law requires the performance of specific types of criminal background screenings that include fingerprint checks for all child care staff members.

OPPONENTS SAY:

SB 1496 would place additional burdens on child care providers who already are subject to regulations. Small operations, such as listed or registered family homes, often rely on one primary adult provider and might have difficulty scheduling time away from the children during business hours to obtain and submit fingerprints.

Imposing these requirements on individuals who might only occasionally work with children could discourage the involvement of volunteers and others. These requirements also could come at a cost to the operators, who already may be operating on a thin financial margin.

SUBJECT: Powers and duties, laws, and elections of certain groundwater districts

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — Keffer, Ashby, D. Bonnen, Frank, Kacal, T. King, Larson, Lucio, Nevárez, Workman

0 nays

1 absent — Burns

SENATE VOTE: On final passage, April 16 — 31-0

WITNESSES: No public hearing

BACKGROUND: The Texas Legislative Council typically codifies the enabling acts of multiple groundwater conservation districts every session through a non-substantive codification bill. The Texas Legislative Council determined it would be necessary to make some statutory changes to remove conflicts in the enabling acts of certain groundwater conservation districts before they could be codified.

DIGEST: CSSB 1336 would amend the enabling statutes relating to the powers and duties and construction of laws of the following groundwater conservation districts:

- Clearwater Underground Water Conservation District;
- Crockett County Groundwater Conservation District;
- Mesa Underground Water Conservation District;
- Sandy Land Underground Water Conservation District;
- Santa Rita Underground Water Conservation District;
- Saratoga Underground Water Conservation District;
- South Plains Underground Water Conservation District; and
- Sutton County Underground Water Conservation District

The bill would remove some references to chapters 49, 50, 51, and 52 to instead reflect the codification of groundwater law in chapter 36. The bill

also would provide that if there was a conflict between those chapters and chapter 36, chapter 36 would prevail.

In addition to the changes relating to the powers and duties and construction of laws, the bill would provide uniform election dates for the following groundwater conservation districts and would require the districts to adjust the terms of office accordingly:

- Mesa Underground Water Conservation District;
- Sandy Land Underground Water Conservation District;
- South Plains Underground Water Conservation District; and
- Sutton County Underground Water Conservation District

The bill would take effect September 1, 2015.

SUBJECT: Prohibiting re-identification of certain de-identified information

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Oliveira, Simmons, Collier, Rinaldi, Romero, Villalba

0 nays

1 absent — Fletcher

SENATE VOTE: On final passage, April 20 — 30-0

WITNESSES: For —Deborah Peel, Patient Privacy Rights; Matthew Henry

Against — None

BACKGROUND: Business and Commerce Code, sec. 521.002 defines personal identifying information as information that alone or in conjunction with other information identifies an individual, including an individual's:

- name, mother's maiden name, Social Security number, date of birth, or ID number;
- unique biometric data, including fingerprint, voice print and retina or iris image;
- unique electronic ID number, address, or routing code; and
- credit card number, bank account number, PIN, or electronic serial number.

DIGEST: SB 1213 would prohibit re-identification or attempted re-identification of de-identified personal identifying information that is released by state agencies.

The bill would define de-identified information as information whose holder has made a good faith effort to remove all personal identifying information or other information that may be used by itself or in combination with other information to identify the subject of the information, including:

- aggregate statistics;
- redacted information;
- use of random or fictitious names or other information; and
- encrypted information.

The bill also would prohibit disclosure or release of re-identified personal identifying information. Violation of this prohibition would be a class A misdemeanor (up to one year in jail and/or a maximum fine of $4,000).

The bill would provide a private cause of action for any individual whose personal identifying information was re-identified, disclosed or released. Statutory damages would be between $25 and $500 for each violation up to $150,000.

Any person who violates the prohibition on re-identification also would be liable to the state for a civil penalty between $25 and $500 for each violation up to $150,000. The attorney general would be authorized to bring an action to recover this civil penalty and also would be entitled to recover expenses and attorney's fees.

The bill would provide a defense to civil action or prosecution if a person was re-identifying the information for the purpose of a study or other scholarly research, as long as the person did not release or publish the identifying information.

The bill also would require any state agency that releases de-identified information and any person who sells de-identified information that came from a state agency to provide written notice that the information is de-identified to the person to whom the information was released or sold.

This bill would take effect September 1, 2015, and would apply to conduct that occurs on or after that date.

SUPPORTERS SAY:

CSSB 1213 is necessary to ensure that private personal information gathered by state agencies is protected. Many state entities collect data from the public that can be used to analyze consumer habits, health trends, and other information. When state entities release this data, they run it

through a de-identification process to anonymize personal identification information, such as names and Social Security numbers. Bad actors sometimes re-identify the data, meaning they match the data with its true owner by cross referencing it with other available data, for illicit purposes such as identity theft and blackmail. As information becomes increasingly available via technology, it is important to ensure that personal information that is collected by the state remains safe and secure.

OPPONENTS SAY:

This bill does not sufficiently define what constitutes "re-identification." This ambiguity could cause issues for prosecutors and civil courts that handle these cases. Judges will be asked to interpret a new concept without statutory guidance.

The bill also could create a double jeopardy issue because the government could be a party to both a criminal suit and a civil cause of action. This issue could lead to underprosecution of serious cases of re-identification.

SUBJECT: Allowing changes to municipal utility governance, transmission lines

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 10 ayes — Cook, Giddings, Farney, Farrar, Geren, Harless, Huberty, Kuempel, Minjarez, Smithee

0 nays

3 absent — Craddick, Oliveira, Sylvester Turner

SENATE VOTE: On final passage, April 9 — 31-0

WITNESSES: For — Katie Coleman, Texas Association of Manufacturers; Bob Kahn, Texas Municipal Power Agency; (*Registered, but did not testify*: Ray Schwertner, City of Garland; Tom "Smitty" Smith, Public Citizen; Michael Jewell and David Parquet, Southern Cross Transmission; Patrick Tarlton, Texas Chemical Council; Mark Zion, Texas Public Power Association; John W. Fainter, Jr., The Association of Electric Companies of Texas, Inc.)

Against — None

On — (*Registered, but did not testify*: Brian Lloyd, Public Utility Commission)

BACKGROUND: Utilities Code, ch. 163, subch. C governs municipal power agencies, which operate municipal power generators that serve multiple jurisdictions. The Texas Municipal Power Agency (TMPA), which serves the cities of Bryan, Denton, Garland, and Greenville, is the only entity that has been created under this subchapter. These cities share joint ownership of TMPA facilities and appoint its board of directors.

As stipulated in subchapter C, the board of directors of TMPA are responsible for the management, operation, and control of the property of TMPA. TMPA may dispose of assets it considers to be unnecessary for the efficient maintenance or operation of its facilities.

Municipal power agencies can issue debt for construction and improvements to electrical facilities.

Utilities Code, ch. 35 governs competition in power transmission services. Chapter 37, subch. B requires wholesale transmission providers to receive certificates of convenience and necessity from the Public Utility Commission.

DIGEST:

CSSB 776 would make changes to Utilities Code, ch. 37 and ch. 163 that would affect municipal power agencies and transmission lines constructed by municipal utilities.

Municipal power agencies. The bill would provide statutory authorization for an alternative governance structure for municipal power agencies, such as the Texas Municipal Power Agency (TMPA), and enable them to wind up some operations by selling property or dissolving it altogether. It would create a new subchapter under Utilities Code, ch. 163. Subchapter C-1 would replicate much of the standing law's language with some exceptions related to governance structure, ability to dispose of property, and ability to dissolve the organization.

For the bill to apply to a municipal power agency, ordinances with identical provisions would have to be passed by each participating municipality. The ordinances also would need to state that the municipality had elected that the agency would be governed under Subchapter C-1 on and after the date designated in the ordinance. If each of the constituent municipalities did not pass applicable ordinances, TMPA would continue to be governed under Utilities Code, ch. 163, subch. C.

Agencies governed under the bill would have all of the powers granted to municipally owned utilities and municipalities that own utilities, except for the ability to tax.

The bill would give municipal power agencies, such as TMPA, the ability to add or remove a participating entity, such as a municipal government, from participation in the agency's activities. Entities could not be added or

removed if their addition or removal would impair the agency's obligations.

The bill would allow the board of directors of an agency to delegate managerial and operational control to employees of the agency. The board would not be able to delegate legislative functions, such as the purchase or sale of agency property, the exercise of eminent domain, adoption or amendment of budgets and rates, and the issuance of debt. Affirmative votes would be needed from a director from each of the participating municipalities, and, if there were more than six directors, a minimum of six affirmative votes would be needed to repeal a resolution delegating authority to employees.

A director would have to be a registered voter who resided in the area of the appointing municipality, an employee or member of the governing board of an appointing municipality, or a retail electric customer of the appointing municipality. Directors would be considered local public officials under Local Government Code, ch. 171. Directors would serve without compensation, although they would be able to continue receiving compensation from the appointing municipality if they were employees or members of the governing board of the municipality. The governing board of municipalities could remove directors at any time or without cause.

The bill would allow participating municipalities to create separate boards of directors — one to administer power generation and another to administer power transmission. To create separate boards of directors, participating municipalities would need to pass concurrent ordinances with identical provisions. There would be no minimum number of members of each board, and each participating municipality would not be entitled to appoint a director to each board.

A municipal power agency could sell, lease, convey, or otherwise dispose of its property, rights, and interests. If the value of one of these assets was greater than $10 million, the disposition would have to be approved by each participating municipality.

The bill would authorize these agencies to issue public securities for financing or improving electric facilities. These securities could include

provisions that would allow third parties to use the agency's facilities, receive output from the facilities, or, in the case of the agency's dissolution, receive an ownership interest in the facilities. Participating municipalities could issue debt to finance their stakes in a municipal power agency.

Municipal power agencies could be dissolved under the bill. To dissolve an agency, each participating municipality would need to pass ordinances that had identical provisions, state the agency would be dissolved upon the winding up of agency affairs, direct the board or boards to wind up the agency's business, and state the date of the dissolution. An agency could not be dissolved if it would impair the rights or remedies of creditors. The agency would continue to exist to satisfy existing debts, liquidate its assets, and take other action needed to end its affairs.

Remaining assets that belonged to the dissolved agency would have to be distributed to the participating municipalities. These participants would decide how the assets were divided. Any agreements between municipalities and the agency created before the effective date of CSSB 776 would be enforceable under the terms of the agreement.

Municipal power agencies could engage in the provision of wholesale power transmission. Transmission services would be governed under Utilities Code, ch. 35.

Construction of transmission lines. The bill also would amend Utilities Code, ch. 37 to establish new requirements for transmission lines constructed by municipally owned utilities and municipal power agencies.

A municipally owned utility and municipal power agency would need a certificate of convenience and necessity (CCN) from the Public Utility Commission (PUC) for the construction of a transmission facility outside the certificated service area of the municipality or participating municipalities. This provision would not apply to transmission facilities placed in service after September 1, 2015, that were developed to interconnect a new natural gas generation facility to the Electric Reliability Council of Texas (ERCOT) transmission grid and for which a municipality was contractually obligated to purchase at least 190

megawatts of capacity before January 1, 2015.

The bill would direct the PUC to provide exemptions from the CCN requirement, including exemptions for upgrades to existing transmission lines and transmission lines within 10 miles of the utility's certificated service area. It also would require the PUC to approve within 185 days of its filing an application for a facility to be constructed under an interconnection agreement between the ERCOT and the SERC Reliability Corporation that had been approved by order of the Federal Energy Regulatory Commission on or before December 31, 2014.

Any municipally owned utility or municipal power agency required to apply for a CCN would be entitled to recover payments in lieu of property taxes through its wholesale transmission fees if:

- the utility had a written agreement with the taxing entity;
- the payments in lieu of taxes were equivalent to the taxes it would have paid if it were a private entity;
- the governing body of the taxing entity was not the same as the governing body of the utility; and
- the utility provided the PUC with a copy of the written agreement and any other information the PUC deemed necessary.

The bill would take effect September 1, 2015.

SUPPORTERS SAY:

CSSB 776 would provide the Texas Municipal Power Agency (TMPA) with the flexibility and options needed for possible future restructuring, which are not explicitly available to TMPA under current statute. The agency has served its purpose, but the power sales contract between TMPA and its member cities is set to expire on September 1, 2018. This forward-looking legislation considers the future of TMPA and would clean up the Utilities Code to address current circumstances.

Many of the options being considered by the cities participating in TMPA are of questionable validity under the current Utilities Code. These include winding up the organization, transferring assets such as the power plant and transmission lines to one or more of the member cities, or transferring operations and assets to a private operator. Current statute has no

provisions for dissolution. CSSB 776 would provide a procedure for dissolution and allow TMPA to distribute its assets among participating cities upon dissolution. The bill would be needed for the cities to pursue these options.

None of the participating cities gets most or all of its electricity from TMPA. As a result, TMPA is a remnant of 1970s electrical needs. Ending local governments' participation in TMPA or dissolving the agency could reduce the administrative overhead for participating entities.

Current statute requires the board of directors to be engaged in the operational details of TMPA. This is burdensome, and the bill would give the board the legal authority to delegate responsibility to staff. More substantive issues, such as the disposition of assets, would remain with the board of directors under the bill.

The deregulation of electricity markets has created opportunities for separate generation and transmission businesses. Currently, TMPA faces barriers to participate in these opportunities by having only one board of directors. The bill would enable TMPA to split the generation and transmission operations so the agency or its successor organizations could participate in these opportunities.

Currently, only TMPA can issue debt to improve or expand its facilities. The bill would allow the participating cities to issue debt to finance their participation in the agency.

In its 2015 Scope of Competition Report to the Legislature, the Public Utility Commission (PUC) recommended that municipal utilities be required to receive a certificate of convenience and necessity (CCN) for constructing transmission lines outside of the municipality or municipal service area. The lack of a CCN requirement implies that municipal utilities could condemn land outside of its service area, affecting landowners who did not receive service from the utility. These landowners would have no recourse regarding the route or operation of transmission lines without a CCN requirement. Requiring municipal utilities to get a CCN from the PUC would match the CCN requirement for privately owned utilities.

Payments in lieu of taxes already are typical for municipal power utilities with operations outside their service area. The bill simply would codify a practice standard among these utilities.

OPPONENTS SAY:

No apparent opposition.